

Planning Commission Date: March 24, 2004

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Item No.

## MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report Prepared by: Troy Fujimoto

Public Hearing: Yes: X No: \_\_\_\_\_

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**TITLE: TOWN CENTER REDEVELOPMENT**

**PERMITS:**

<b>SZ2003-12</b>	<b>SITE AND ARCHITECTURE - COMMERCIAL</b>
<b>SZ2003-13</b>	<b>SITE AND ARCHITECTURE - RESIDENTIAL</b>
<b>UP2002-42</b>	<b>USE PERMIT - SUPERMARKET (INCLUDING ALCOHOLIC BEVERAGE SALES)</b>
<b>UP2002-43</b>	<b>USE PERMIT - RESIDENTIAL DENSITY BELOW 21 DU/ACRE</b>
<b>UP2003-57</b>	<b>USE PERMIT - FREESTANDING SIGN #1</b>
<b>UP2003-58</b>	<b>USE PERMIT - FREESTANDING SIGN #2</b>
<b>UP2004-1</b>	<b>USE PERMIT - FREESTANDING SIGN #3</b>
<b>EA2002-12</b>	<b>MITIGATED NEGATIVE DECLARATION</b>

**Proposal:** A request to demolish and redevelop a part of the Town Center, adding 65 townhouses, a new supermarket, new commercial areas, freestanding signs, and new sign program.

**Location:** Near the intersection of East Calaveras (north) and North Milpitas (east).

**APN:** 028-12-004, 006, 013, 014, 016, & 019

**RECOMMENDATION:** Approve Site and Architecture Review (SZ2003-12 & SZ2003-13) and Use Permit No. UP2002-42 & 43, UP2003-57 & 58, UP2004-1, and Adopt Mitigated Negative Declaration No. EA2002-12.

**Applicant:** Shapell Industries of Northern California, 100 N. Milpitas Boulevard, Milpitas, CA 95035

**Property Owner:** Shapell Industries of Northern California, 100 N. Milpitas Boulevard, Milpitas, CA 95035.

Mervyn's, PO Box 9456, Minneapolis, MN, 55440.  
San Francisco PUC, 1155 Market Street, 5<sup>th</sup> Floor, San Francisco, CA, 94103.

Previous Action(s): S-Zone Amendments, Use Permits, EIA's, General Plan Amendment, and Rezoning

Environmental Info: Mitigated Negative Declaration

General Plan Designation: Town Center

Present Zoning: Town Center (TC-S), with an S-Zone overlay

Existing Land Use: Shopping Center

Agenda Sent To: Applicant and Owners as noted above

Attachments:

- Plans
- Sign Program
- Proposed Streetscape Photosimulation
- Draft Owners Participation Agreement (OPA)
- Applicant conceptual agreement with draft OPA, dated March 18, 2004
- Transportation Impact Analysis, Hexagon Transportation Consultants Inc. (dated: February 27, 2004)
- Noise Assessment Study, Edward L. Pack Associates, Inc. (dated: September 25, 2003)
- Air Quality Impact Analysis, Donald Ballanti, Certified Consulting Meteorologist, (dated: December 2003)
- Mitigated Negative Declaration & Mitigation Monitoring Program
- Letters and Emails in regards to the proposed project

PJ#3153

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## BACKGROUND

The site is located near the intersection of Calaveras and Milpitas Boulevards and is approximately 34 acres. It is located immediately east of the Milpitas Civic Center, and extends east to Hillview Drive. The site is currently developed with a multi-tenant shopping center, with freestanding buildings located along the periphery of the site. The shopping center is home to major retail tenants including Staples, Big Five Sporting Goods, and Mervyn's. The site currently has a multi-plex cinema, restaurants, and other small retail tenants. The site is also home to the Milpitas Farmer's Market held weekly in the parking lot.

Surrounding uses include residential to the north, retail, hotel and office uses to the east, retail and office uses to the south and office, retail, and the Civic Center to the west. The site is bounded by Calaveras Boulevard to the south, Hillview Drive to the east, and Berryessa Creek to the northeast.

In 1980, the City approved an S-Zone application for the construction of the Milpitas Town Center. Since this time, the site has had numerous S-Zones approval amendments and use permits.

### **APPLICATIONS SUBMITTED**

For the residential portion of the project, the applicant is requesting Site and Architecture approval, pursuant to Section 42 of the Zoning Ordinance for the construction of new multi-family buildings (townhouses) and related site improvements. The applicant is also requesting approval of a Use Permit, pursuant to Section 22.04-7 (Residential developments between 1 and 20 dwelling units per acre – DU/acre) and Section 57 (Use Permits) of the Zoning Ordinance because the proposed density of the project is approximately 14 DU/acre.

For the commercial portion of the project, the applicant is requesting Site and Architecture approval, pursuant to Section 42, for the construction of a new retail building, signage, architectural elements, and related site improvements which include parking lot and landscape modifications. The applicant is also requesting approval of use permits for a supermarket, with alcoholic sales – and an internal coffee café, and three freestanding shopping center signs over six (6) feet. These requests are pursuant to Sections 22.04-1 (alcoholic beverage sales), 22.04-9 (restaurant), 22.04-11 (supermarket), Chapter 30-4.02 (a) (Regional Shopping Centers, Signs), Chapter 30-3.03(c) (Freestanding signs over six (6) feet in height), and Section 57 (Use Permits) of the Zoning Ordinance.

### **PROJECT DESCRIPTION**

The applicant is proposing to demolish the majority of the western building (currently contains Staples), the multi-plex cinema building, and the western end of the eastern building (currently contains Erik's Deli Café and other smaller tenants). In its place the applicant is proposing to develop a multi-family residential project (65 units) at the rear of the site (north end) at a density of approximately 14 DU/acre. The residential project would include 16 units to be affordable to moderate income households for 45 years and result in 4 additional very-low income units to be provided off-site (discussed in more detail under the Affordable Housing section. In addition, the applicant will be reconstructing the commercial building to include a 54,000 square foot Safeway supermarket and approximately 20,000 square feet of new commercial space.

In addition the applicant will be modifying the existing layout of the parking lot and doing significant landscape modifications to the entire site. In a separate application request, the applicant is also proposing to amend a portion of the sign ordinance to allow additional freestanding signs to the Town Center area. Thus, the applicant is proposing to establish a new sign program that would include two (2) new freestanding signs and replacement of one (1) existing freestanding sign.

### **Supermarket Operations**

The Safeway will operate 24 hours a day with deliveries occurring between 10:00PM and 7:00AM. In addition, the market is proposing to have on-site sales of all types of alcoholic beverages and operate an internal 32-seat coffee café. The coffee cafe will be located towards the front of the store, but will only have internal access. No exterior access is provided. The coffee cafe will have a take out area with its own cash register where people can purchase items to go.

## **Site Layout and Access**

### Commercial:

The proposed site layout will be similar to the current condition. The new commercial buildings will be located in the same location, except on a smaller footprint, the residential portion of the project will be at the rear or north end of the site. The remainder of the buildings in the Town Center will remain in their current location.

The site will continue to have three major access points, one off of Calaveras Boulevard, one off of Milpitas Boulevard and one off of Hillview Drive. Interior circulation for the commercial portion of the project will generally remain the same, except for minor modifications. One change will be the driveway off of Calaveras Boulevard. Instead of the straight north/south driveway, it will bend to the east and create a "T" intersection at the front of the new Staples store location. In addition, a new vehicular access will be opened up between the east and west buildings that will lead to the residential access. There will be a new vehicular accessway between the Safeway building and the existing building at the northwest corner of the parcel, this access will allow delivery vehicle access to the loading areas at the rear. The parking lot fronting the new location of Safeway will be modified from current conditions.

Lastly, the applicant is proposing to reconfigure the two intersections near the Civic Center (at the corner of Staples). The reconfigured site plan will eliminate one "T" intersection, and through modifications on both Town Center and City property, the result will be one four way intersection.

### Residential:

The site layout for the residential portion of the site will have a main loop road around most of site. Guest parking will be at the northern periphery of the site. The homes will have rear and courtyard vehicular access and the front of the buildings will open up into a landscaped paseo. Garbage facilities will be interspersed throughout the site. Access to the residential portion of the project will be off of the loop road (Town Center Drive) that circles the site and will have one access point at the west end and one at the eastern end of the residential area.

The applicant is proposing to install a comprehensive pedestrian trail system that will meander throughout the site. The access will connect the future pedestrian bridge and creek trail to the north, to Calaveras Boulevard and the Civic Center to the south. The new pedestrian walkways will also connect to Hillview Drive to the east and the Shapell office building to the west.

## **Parking**

### Commercial:

The required parking for the commercial portion of the project is summarized in the table on the following page:

Town Center Commercial Parking Table					
	Square Feet	Parking Ratio, per square foot	Number of Seats	Parking Ratio per seats	Parking Required
<b>Commercial</b>	206,264	1/200			1,031
<b>Restaurants</b>					
Coffee cafe in Safeway	53	1/50	32	1 per 2.5 seats	14
Giorgio's	106	1/50	177	1 per 3 seats and 10% for employees	67
Erik's Deli			96	1 per 3.5 seats	27
Sushi Lover's			53	1 per 3 seats and 10% for employees	19
Aloha			112	100 seats at 1 per 3.5 seats and 12 at 1 per 3 seats plus 10% for employees	33
El Torito			352	1 per 3.5 seats	100
New Tung Kee			160	116 seats at 1 per 3.5 seats and 44 at 1 per 3 seats plus 10% for employees	49
Red Lobster			262	1 per 3.5 seats	75
<b>Medical Use</b>	4,068	1/225			18
				Total Parking Required	1,433
				Parking Provided	1,457

It should be noted that there is variation in the parking ratio for some of the restaurants because these restaurants received use permits at a time when the parking ratio was lower. Based on the table above, there is adequate parking for the project.

*Residential:*

The applicant is proposing 65 townhomes; all of which are either 3 or 4 bedroom configurations with square footages ranging from 1,480 to 1,790 square feet. Based on the density proposed, the parking requirement is two (2) spaces for each unit plus twenty (20%) percent for guest parking requirements. Based on this description, the required parking spaces for the residential portion of the project is 156 parking spaces. As proposed, the project is providing 160 parking spaces. Thus, there is adequate parking for the residential portion of the project.

**Building Architecture, Colors, and Materials**

Commercial:

The applicant is proposing to renovate and rebuild portions of the site, while maintaining the existing architecture theme of the existing buildings. The basic design premise is stucco exterior with a mansard style tile roof. However, the Safeway building will incorporate new architectural features that will integrate with the existing buildings.

The new Safeway building will have a stucco exterior with a stone base. The store front will have an arcade with a metal grid feature attached to the over hang. At each of the store entrances will be a tower element with a tile roof cap. The tower element will have a column on each side to pronounce the entry. The architecture proposed will match the remainder of the center, as the tile and mansard roof are included in the design of the new building. The relocated Staples store will have a similar storefront exterior as the Safeway. Because this will be on the existing eastern building, it will help to tie the two buildings together. Other upgrades throughout the site include vertical tower elements at the relocated Staples stores and tower elements at most corners of all the buildings.

A new architectural element is introduced to the shopping center. This is the portion of the building at the western end. The building architecture at this end has a rounded-curved elevation without a mansard roof with metal awnings over the window. This is the only part of the shopping center that has these features.

The project will also include a new fountain to be located near the southwest corner of the site, nearest to the Civic Center (site of the existing Staples store). The fountain will be circular and made of concrete. The fountain will have smaller jets of water shooting from the perimeter of the fountain into the larger center portion where the main jets of water will be shooting skyward.

The proposed colors for the buildings will be earth toned and consist of various shades of browns, greens, off-whites and reds. The project will also incorporate stone exteriors and stone bases with complementary colors including reds, grays, and off-whites. The colors will not be significantly different than the color palette currently in use at the shopping center; however, there will be an increase in the amount of colors used.

Residential:

The units proposed are mostly arranged in clusters. The garages of the units cluster around a single driveway, while the remainder of the units will be inline with garages at the rear. The buildings will be facing into an inner landscaped paseo.

The architecture of the buildings is modern and contemporary. However, with the inclusion of concrete S-roof tiles, it has an element of Mediterranean architecture. The majority of the buildings are two stories, while some are three stories. Garages are at the rear of the units. The exterior of the units have a plaster sand finish and painted metal railings around the patios and balconies/decks.

Building colors proposed for the residential portion of the project will not vary much from the commercial portion of the project. The colors used include shades of off-whites for the exterior with darker shades of green and gray for accent portions including garage doors, railings, and window trim.

**Signs**

The applicant is proposing to modify the sign program for the site and to add new freestanding signs. Further discussion is provided later in the report.

**Landscaping**

Commercial:

The project would result in significant modifications to the existing on-site landscaping. The applicant is proposing to remove or relocate approximately 385 trees of which 85 are defined as "protected" (tree trunk circumference greater than 37 inches). In its place the applicant will be installing a palm theme for the commercial portion of the project. The Calaveras Boulevard streetscape frontage will include red maple trees that are interrupted at two locations. The street trees will be spaced at 50 feet on-center in an 8 foot sidewalk, using 4 foot by 4 foot tree wells and structural soil. The interruption in the streetscaping will not be planted with any red maple trees. Behind the sidewalk, the applicant is proposing a double row of Mexican fan palm trees, grouped perpendicularly to the sidewalk. They will also be spaced 50 feet on-center except for a large portion between Big Five and El Torito that will be spaced 100 feet on-center. Staff has prepared a photo-simulation (attached) of the applicants proposal.

The applicant is proposing to have palm trees along the interior driveways of the parking lot. Canary Island palms will be used to line Town Center Drive off of Calaveras Boulevard and along the frontage driveway adjacent to the commercial buildings replacing the mature existing deciduous trees. Queen palms will line the three "arms" roads that splinter from main interior intersection off of Calaveras Boulevard.

Within the new parking field fronting Safeway, the applicant is proposing to locate Bradford pear trees throughout the field in a random pattern. The landscaping in the other parking fields will remain as is.

Residential:

The applicant is proposing to transplant trees from the commercial site and move them to the residential area. The trees will be transplanted as the site allows and will be used to infill areas in

need of additional trees. The new trees to be added to the site include magnolias, flowering pears, American sweet gums, and Australian willows.

The paseos within the development will be landscaped with a meandering trail surrounded by trees, open lawn areas, groundcover, bushes, and shrubs. At the very west end of the site will be an open lawn area that can accommodate various uses.

## **ISSUES**

### **Use Permit**

#### Use Permit Findings

Any approval of a Use Permit requires that the Planning Commission make the following findings:

1. The proposed use is consistent with the Milpitas Zoning Ordinance.
2. The proposed use is consistent with the Milpitas General Plan.
3. The proposed use is suitable to the site.
4. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

The following sections discuss the degree to which these findings can be made based on the uses, improvements, design, and infrastructure proposed.

### **Site and Architecture Review (S-Zone)**

#### S-Zone Requirements

Any approval of a S-Zone application requires that the Planning Commission make the following findings:

1. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.
2. The project is consistent with the Milpitas Zoning Ordinance.
3. The project is consistent with the Milpitas General Plan.

The following sections discuss the degree to which these requirements can be made based on the uses, improvements, design, infrastructure proposed.

### **Conformance with the General Plan**

#### Commercial:

The proposed S-Zone and Use Permit applications are consistent with the following principles and policies of the General Plan.

#### *Guiding Principles:*

2.a-G-4 which encourages the Town Center to be the “heart” of Milpitas’ civic, cultural, business and professional life. The addition of a major supermarket will only enhance the standing and visibility of the Town Center.



2.a-G-5, a park-like setting through parks, trails, and greenway system. The project includes a new bike/pedestrian pathways throughout the site and connects from the future Berryessa Creek trail to the civic center and Calaveras Boulevard.

*Implementing Policies:*

2.a-I-2 which promotes in-fill development in the incorporated city limits. The project will be an in-fill project redeveloping Town Center.

2.a-I-3 which encourages economic pursuits which will strengthen and promote development through stability and balance, the commercial redevelopment will provide more jobs to the City and will provide an increase of retail opportunities to an under performing retail center.

2.a-I-5 which maintains policies that promote a strong economy within existing environmental, social, fiscal and land use restraints and policy and 2.a-I-6 which maintains a balanced economic base that can resist downturns in any one economic sector. In addition to reinvigorating a shopping center that has been on a continual decline, the project will add a new supermarket to the City that will offer many different services that will offer the customer a “one-stop” shop, including a pharmacy, coffee café, full service deli, bakery, and floral sales.

2.a-I-7 which provides opportunities to expand employment, and promote business retention, as the project will provide new tenant spaces and will rejuvenate a shopping center that was largely vacant. The remodel will potentially add new jobs to the city.

*Residential:*

The proposed residential project is consistent with the following policies of the General Plan.

*Guiding Principles:*

2.a-G-2 which encourages a relatively compact form, through the use of compact development and higher densities. The proposed project is at a higher density than single family, thus, is utilizing the land at a higher density.

2.a-G-3 which provides for a variety of housing types and densities to meet the demands of families. The project is providing three and four bedroom attached homes. Most of the recently approved projects have been two and three bedroom units, thus, this project is providing a variety of unit types.

*Implementing Policies:*

2.a-I-11 which encourages a park-like quality for all residential areas. The project is proposing landscaped paseos with open areas in the project and is proposing a pedestrian pathway throughout the site.

2.a-I-12 which encourages variety and mix in housing types and costs. The project is a unique type of project that has not been done before in the City and fits between a traditional single family home and a high density multi-family development.

2.a-I-20 which encourages the development of the Town Center as an architecturally distinctive mixed-use complex. The proposed design of the project will be distinctive to the City, and will now be a mixed use project with residential on the site and pedestrian connections that allow residential to navigate throughout the site.

### *Housing Element Guiding Principles and Implementing Policies*

*B-G-1* which requires the provision of adequate sites for housing and to accommodate the City's regional share of housing units and affordable housing units at the very low, low and moderate levels. The proposed project is at a density of 14 DU/acre, below what the Housing Element identifies as the site's potential unit yield.

*C-I-1* which endeavors to facilitate the development of 351 low-income and 698 very low-income housing units (of the 2,195 affordable units required). As a result of the project, 4 additional very-low income units will be created within the City.

*C-I-2* which directs the City to target at least 20 percent affordable units within new multi-family residential projects. The project is meeting this policy by providing 31% affordability with 16 moderate income units within the project and 4 very-low income units provided off-site.

*C-I-8* which encourages the City to support the inclusion of studio and four (4) bedroom units. The project as proposed does include some 4 bedroom units.

### **Density**

The City's housing production goal is to provide 4,348 new housing units through the planning period of 1999-2006. The Housing Element identified sites through the City where new housing units could be build. This "Inventory of Adequate Housing Sites" is provided as a table in Appendix D of the Housing Element and includes a density range (e.g. 21-40 DU/acre) that each site could develop within. The estimated unit yield for each site within the table is based on the site developing within the mid-point of the suggested density range.

The Town Center is identified as an "underutilized site" in Appendix D with the potential to yield 336 new housing units at a density range of 21-40 DU/acre. This unit yield was estimated using the presumption that half the shopping center would redevelop as residential. The project is being proposed at a density of 14 DU/acre, well below the range identified in the Housing Element.

The applicant is not interested in building a residential project on this site within the recommended density range but has agreed to provide a variety of other public benefits in-lieu of the higher density.

### **Public Benefit**

The applicant has agreed to provide the public benefits shown below that would be associated with the proposed project and are discussed in more detail in the *Site Layout* section of the staff report. The benefits recommended for approval would be experienced not only for users and residents nearest the project, but by residents Citywide.

- ❑ Enhancement of the existing sidewalk connection along the north side of the library to include decorative pavement, illuminated bollards, and trees with uplighting from the main entrance of the library to connect to the proposed pedestrian path, at the intersection near the existing Staples store.
- ❑ Parking lot/drive aisle improvements in the vicinity of the Veteran's Memorial to correspond with ring road intersection improvements proposed by the applicant.
- ❑ A new decorative pedestrian path (to include lighting, landscaping and upgraded paving)

from the entrance to Albertson's/Longs through the Town Center parking lot to safely connect pedestrians to the civic center and Town Center on the east side of Milpitas Boulevard.

- ❑ Improvements to increase the safety of pedestrians crossing Milpitas Boulevard near the current library. The improvements would include new pedestrian crossing lights and decorative paving.
- ❑ A ramp that connects to the Berryessa Creek trail and bridge from the Town Center. This improvement will allow all trail users to have better access to the Town Center.
- ❑ To improve pedestrian connections in and around Beresford and Town Center, a new sidewalk on the south side of Beresford Court that connects from Terrace Gardens to Milpitas Boulevard should be constructed to complete this gap in pedestrian access.

With these public benefits included in the project, staff can support the proposed density due to the increased benefits provided for the public.

### **Affordable Housing**

The Town Center is located within Redevelopment Project Area No. 1. State redevelopment law requires that 15% of the residential units built within a redevelopment area be affordable and of these units, 40% are required to be affordable to very-low income households. The city-wide affordability goal provided in the Housing Element is 20% for new residential developments.

The applicant is proposing 65 total units for the project. However, as explained in the "Density" section of the staff report, the density range identified in the Housing Element for this site is 21-40 DU/Acre. Based on the minimum density in that range, the 4.7 acres proposed for residential development could yield 99 units. If the project were to build 99 units (rather than the 65 proposed), the City would have expected 20 affordable units (20% of 99) within the development. Twenty percent of the 65 units the applicant is proposing would result in 13 affordable units, at least 7 units less than what the residential area could yield within the suggested density range. The applicant agreed to have the project provide 20 affordable units in order to help meet the affordability goals in the Housing Element. The 20 units would consist of 16 moderate income units within the development and provisions to have 4 very-low income units created off-site through the rehabilitation of existing units.

### **Conformance with the Zoning Ordinance**

Pursuant to Section 22 of the Zoning Ordinance, the proposed project will be in conformance with the development and parking standards for the Town Center "TC" District in the following ways:

Standards	Proposed	Complies
Height – None, any structure above 35 feet requires Planning Commission Approval	Commercial - Varies to 45 feet Residential – Varies to 37 feet	Yes, with Commission approval
Front Yard – 35 feet	Over 35 feet	Yes

Standards	Proposed	Complies
Side and Rear Yards – None, when abutting residential 15 feet.	Over 40 feet	Yes
Floor Area Ratio – 85%	Approximately 20%	Yes
Parking – Varies (see parking section)	1,457	Yes
Landscaping – End of parking aisles, required yards.	Yes, except at rear yard	Yes, per Commission approval

### Conformance with the “S” Zone Combining District

The purpose of the “S” Zone Combining District is to “ensure orderly, attractive and harmonious development; recognize environmental limitations on development”. In this case, the project will not impact the site and neighborhood because no buildings are significantly taller than any existing structures. The proposed project is harmonious with the surrounding neighborhood as the project is similar to the existing developments in the area.

The design of the commercial portion of the project incorporates attractive architectural features including tile treatments, metal trellises, arcade areas, new plaza treatments and new vertical elements and have made special efforts to screen loading and trash collection areas from views. The project also uses colors consistent with surrounding and existing buildings. The applicant is also proposing a new landscape treatment for the site that will invigorate and improve the appearance of the center. The applicant has also provided pedestrian paths to improve the connectivity of the site with adjacent uses.

The design of the residential portion of the project contains attractive buildings that have variation in roof heights and have a vertical and horizontal variety that provide interest to the project. The applicant is also proposing a landscape theme that will enhance the buildings and will provide an amenity to future residents. In addition, pedestrian paths are provided to connect to adjacent uses and the future trail and pedestrian bridge at Berryessa Creek.

### Site Layout

#### Commercial:

The site layout was originally done back in the late 70’s-early 80’s. At that time shopping centers were designed to prioritize the automobile with most everything else an afterthought, thus, the site is laid out to be the most convenient for the vehicle, parking is offered at the front with the buildings pushed back, a ring road was done to provide easy access to all parts of the site. However, today’s design goals are somewhat different, site layout should take into consideration alternative modes of transportation and should also take advantage of the Civic Center and be incorporated with its design. *Staff recommends* the applicant modify the layout (driveways, parking and walkways) near the corner of the existing Staples store. This will help the circulation in this portion of the site, which currently is plagued with misaligned and close proximity intersections and unsafe pedestrian crossings.

Because the applicant is proposing to make the Town Center more pedestrian and bicycle friendly an opportunity exists to complete missing pedestrian links from Town Center to other portions of the Town Center district including the Civic Center and Beresford Square. In addition, because the redevelopment of the site is expected to increase the amount of people in the area the links will provide safe and convenient access throughout the area. To complete the pedestrian connections *staff recommends* the applicant provide pedestrian access from the main library entrance through the parking lot to connect to the proposed pedestrian trail at the existing Staples store. In addition, a pedestrian path shall be provided from Albertson's/Longs in Beresford Square shopping center to the library to complete the pedestrian connections. To increase the safety for pedestrians that will have to cross Milpitas Boulevard, *staff recommends* the applicant install pedestrian cross lights and an upgraded sidewalk across Milpitas Boulevard. The pedestrian path shall have upgraded paving, pedestrian lights, increased landscaping and uplighting of trees.

Due to years of somewhat infrequent maintenance of the site, large portions of the site have fallen into a state of disrepair, including faded paint lines, broken wheel-stops and the like. Since the site will be undergoing major reconstruction, *staff recommends* that the opportunity be taken to improve not only the portions that will be redone, but the entire parking field, to include restriping, replacing missing and badly faded traffic signs, and broken wheel-stops.

#### Residential:

As part of the residential portion of the site, the applicant is proposing to locate the garbage enclosures at the rear of the site, adjacent to the Berryessa Creek right-of-way. The location in general does not pose any on-site concerns, however, some of the locations selected are directly below and adjacent to the future creek trail. Thus, *staff recommends* the applicant modify the locations of garbage enclosures so they are not in close proximity to trail gathering areas.

Because this project will have a mixed use feel (being in close proximity to the commercial) and be of a higher density than single family, it is important to make alternative modes of transportation as accommodating as possible, thus, *staff recommends* bicycle parking be provided throughout the development.

As part of the residential project, the applicant is not proposing to include any recreational amenities for future residents of the development. While Gill Memorial park is located across Berryessa Creek, well planned multi-family residential projects incorporate recreational amenities. Providing these amenities enhances the project, provides amenities to those with families (which can be expected since there will be up to 4 bedroom units), and will help to decrease the impact on nearby park facilities. Thus, *staff recommends* the applicant provide recreational amenities to include a tot-lot and a sheltered picnic area with barbecues and seating.

The applicant has provided decorative paving accents in portions of the site plan, especially at the location at the west intersection of the site. This not only provides an aesthetic improvement to the site, but it also serves a useful purpose of providing information to visitors that this is an entrance into a new portion of the Town Center. Thus, *staff recommends* the applicant provide the same type of decorative paving accents for the intersection at the southeast end of the residential portion of the project.

With the future bicycle/pedestrian crossing over Berryessa Creek expected to be completed within a couple of years, it is good planning and circulation to provide pedestrians and bicyclist access to and from the Town Center. Thus, **staff recommends** the applicant construct a ramp and trail connection to the future bicycle/pedestrian trail and bridge.

## **Building Architecture**

### Commercial:

The applicant is proposing to maintain the overall existing architectural theme of the shopping center while adding some new features, such as vertical towers, flat roofs, curved facades with awnings and metal features under the arcade overhang. While the proposed modifications integrate well with the existing architecture, there are areas of the project that need improvement:

- ❑ The applicant has improved most of the building exterior elevations, however, the south elevation of shop “E” is relatively uninteresting and provides no variety. Thus, **staff recommends** the applicant modify the elevation to increase the architectural interest.
- ❑ The two (2) cart storage areas for Safeway should blend and match the building. Thus, **staff recommends** the wall be designed as part of the building and add to the architecture. This can be established by using high quality materials that match the building exterior treatment.
- ❑ To minimize aesthetic concerns with shopping carts left outside for extended amounts of time, **staff recommends** that shopping carts be collected on a regular basis.
- ❑ To maintain the appearance of the parking lot, **staff recommends** no pre-fab, metal, or bright colored shopping cart corrals shall be used in the parking lot, all cart collection areas in the parking lot shall use concrete curbing.
- ❑ To provide increased transportation options for users of the shopping center, **staff recommends** the project provide bicycle racks throughout the site. The racks shall complement the architecture of the buildings.
- ❑ Because of the interaction of residential and commercial uses, it is important to minimize the amount of noise and lights that the commercial use will have on the residential uses. To ensure that the two uses can co-exist in harmony, **staff recommends** the project incorporate screen and sound walls from loading areas to a height of the top of the delivery vehicles.
- ❑ The applicant has proposed trellises throughout the project site, however, some are metal and some are wood, **staff recommends** for long term maintenance and durability, that all trellises be of a metal material.

### Residential:

The applicant has submitted residential building elevations that are preliminary in nature. While the building footprints and basic shape and style of the building have been proposed, the fine details of the building have not been adequately presented. As such, **staff recommends** the applicant submit detailed residential elevations for further review.

**Staff recommends** the revised elevations include the following:

- ❑ To give the project a richer and more architectural interesting appearance recessed windows and doors (a minimum of six (6) inches) shall be used and windows shall have a height greater than or equal to the width, throughout the project.
- ❑ All window glass shall be clear.
- ❑ There are portions of the project containing large blank sections of wall, in particular on various elevations of the Type I and Type II buildings. To provide the same level of architectural interest throughout, revised plans shall be submitted that reduce the area of the blank walls.
- ❑ To give the building better balance, a base or appearance of a base shall be incorporated into the residential buildings.
- ❑ Revised plans shall show locations of exposed downspouts, with the expectation that they blend with the building architecture to the greatest extent possible.

The applicant has proposed a color palette that will be used for the project. While there is some variation to the colors proposed to be used for the project, because it is a higher density project, it is important to reduce the sameness of the buildings. Using different colors for the various buildings give architectural interest and variety. Thus, *staff recommends* the project use a variety of colors for the buildings to the approval of the City.

### **Landscaping**

The applicant is proposing to significantly modify the existing on-site landscaping. They are proposing to remove and relocate the majority of the existing landscaping at the front of the site and in the commercial parking lot. Many of the trees proposed to be removed or relocated are either mature or protected. Currently, there are over 700 trees on-site. Most have been around for over 15 years, thus, most are mature. Of these trees, the applicant is proposing to remove or relocate approximately 385, of which approximately 85 are protected trees. A protected tree as defined by the Municipal Code is any tree on commercial/industrial property that has a tree trunk circumference of over 37 inches at a point measured 42 inches from the ground. To maintain adequate tree coverage and canopy on the site, *staff recommends* the applicant submit a revised landscaping plan that shows a tree replacement ratio of 1 to 1, with a minimum replacement size of 24-inch box for all mature trees, and a minimum size of 48-inch box for all protected trees. If these ratios cannot be obtained on-site then the developer shall plant the trees on the Mervyn's property or make a contribution into a City tree fund.

The applicant's tree removal proposal introduces a new palm landscape theme to the site. Existing trees will be removed from Calaveras Boulevard and in the front parking lot. The new landscape theme will include straightening out the sidewalk along Calaveras Boulevard to install an urban landscape. The sidewalk is proposed to be eight (8) feet in width with 4' x 4' tree wells for the proposed red maple trees where street trees currently do not exist. Behind the sidewalk, the berming will be redone and replaced with perpendicular bands of low groundcover. Mexican fan palms will be planted in groups of two and spaced 100 feet on-center between Big Five and Red Lobster restaurant and 50 feet on-center for the other frontage areas. There will be red maples spaced 50 feet on-center in the tree wells, however, they will not be continuous along the entire Calaveras Boulevard frontage. There will be three maples near the corner of Hillview Drive, three east of the Town Center Drive entrance (fronting Red Lobster), and three at the west

end of the site, fronting El Torito restaurant. Inner roads throughout the commercial site will be palm-lined and trees within the parking lot will be Bradford pear species. Staff is concerned with the proposed streetscape plan along Calaveras Boulevard for the following reasons;

1. The existing streetscape along Calaveras Boulevard does not have any palm trees at all. This new theme will break up and give a disjointed look to the streetscape. The existing trees match what occurs on both sides of Calaveras Boulevard and presents a pleasant, cohesive, continuous, and stately landscaped corridor down Calaveras Boulevard
2. The project location is in the heart of the City and will permanently alter this important stretch of road by removing healthy, mature, large trees and replacing them with palm trees that do not have the canopy nor foliage that the existing trees provide.
3. The use of red maples at only selected locations along the frontage, give the site a disjointed and inconsistent look and feel to this portion of the streetscape.
4. While staff can appreciate the need for visibility for any commercial business, the applicant is requesting signage along Calaveras Boulevard that will identify the major tenants of the property and entrances. This will provide adequate visibility, as other large shopping centers rely on their signs more than the storefront to attract attention. In addition, there are examples throughout the bay area where Safeway stores are set far into the parking lot with rows of foliage blocking direct views from the main frontage street. Some of these Safeways are relatively new or recently remodeled. Staff identified and visited sites in Fremont, Santa Clara, and San Jose.
5. Due to small canopies and root system palm trees do not provide the same environmental benefits as the existing trees, thus impacting rate of stormwater runoff from the site, oxygen/carbon dioxide exchange, greenhouse effect, shade and visual greenery.
6. Identified in the *Streetscape Master Plan*, are street trees, on streets such as Calaveras Boulevard and in special districts like the Town Center, that are to be large in height and width. Palm trees have the large height, but they do not have the large width.
7. According to the *Streetscape Master Plan*, trees should be planted based on the size of the mature canopy size. Even the largest trees typically have a canopy approximately 50 feet wide, thus, the spacing of the trees should be no more than 50 feet on center to be consistent with the master plan.

To illustrate the impact of using palm trees along Calaveras Boulevard, photo-simulations of the applicant's landscape proposal have been prepared. The photo simulations show how the streetscape and entire look of the area will be changed.

Based on the previous points, **staff recommends** the applicant plant the Mexican Fan Palm trees in a single row 50 feet on-center along the entire Calaveras Boulevard frontage to minimize the deciduous tree streetscape theme.

Throughout other portions of the site to ensure that the palm trees installed are not diminutive and will offer some landscape impact to the site, **staff recommends** that new palm trees have a minimum of 12 feet of clear trunk.

The applicant is also proposing significant modifications to the interior parking lot and the driveways throughout the area to improve the site. While the applicant has proposed various



changes in the parking field fronting Safeway, the applicant does not propose any other changes in the other parking fields. In addition, the applicant is proposing to locate parking lot trees in diamond planters. Historically, trees in planters at the Town Center have not grown to their full potential. To ensure that the new plantings have the opportunity to grow to their potential and ultimately improve the appearance of the parking field, *staff recommends* that where trees are proposed in the parking lot, no diamond planters be used. Instead trees shall be located in planter strips and structural soil shall be used.

The applicant is proposing a walkway/trail throughout both the residential and commercial portions of the project. This walkway connects from the future pedestrian bridge over Berryessa Creek to the Civic Center and Calaveras Boulevard. To encourage use of this walkway/trail and provide a pleasant experience for users, *staff recommends* the applicant provide decorative pavement, bollard lighting (spaced no further than 40 feet apart), additional landscaping (trees) along the trail/walkway and uplighting of trees.

To ensure that landscaping is properly manicured and replaced when needed, parking fields do not fall into disrepair, and stormwater mechanical equipment is maintained, *staff recommends* the applicant submit a maintenance plan that encompasses all aspects of the site, including but not limited to, parking fields, landscaping and any fossil filters or stormceptors.

In addition, because of the extensive streetscape improvements that will be incorporated as part of the project and to ensure the upkeep of streetscape in this important portion of the City, *staff recommends* the applicant enter into an encroachment permit agreement for the maintenance of the landscaping along both sides of Hillview, Calaveras and Milpitas Boulevards in the vicinity of the site. *Staff also recommends* the applicant submit a maintenance plan for the street trees to ensure that they are maintained to City standards.

### **Lighting**

The applicant is proposing to continue the same type of parking lot lighting that currently exists. In addition, the applicant is adding new lighting elements to the site, including pedestrian scale lighting and lighting for the residential portion of the project.

As part of the new lighting elements, the applicant is proposing to attach uplighting to trees. While this is a unique application of lighting, staff feels that this arrangement is not aesthetically appropriate for all trees on the site, thus, *staff recommends* that uplighting of palm trees along the main entrance into Town Center off of Calaveras Boulevard shall be uplit with ground mounted light fixtures. In addition, *staff recommends* no uplighting of any palm trees along Calaveras Boulevard.

After a review of the submitted lighting plan (isolumen plan) staff noticed a dark portion of the project between the commercial and residential uses. To provide increased security and enhance visibility at night, *staff recommends* the applicant install lighting in this portion of the project (behind shop "C").

Staff is convinced that if lighting is used properly throughout the site, including to accent architectural features, it can only enhance the appearance of the site at night. Thus, *staff recommends* that an exterior lighting plan be prepared and submitted to the City to ensure that on-site lighting is harmonious, consistent and organized.

### **Solid Waste/Loading Areas**

Loading areas can become problem spots if proper procedures and upkeep are not maintained. For this project, the loading areas are of greater importance since they face residential uses with high visibility. While the applicant is proposing screen walls and other screening solutions for these areas, to ensure that proposed measures are adequate, *staff recommends* that walls or other screening be designed and constructed to the full height of any truck lights. To provide additional screening and noise dampening of loading activities at the new loading dock at the rear of Safeway, *staff recommends* that the wall be extended (horizontally) an additional ten (10) feet.

In addition to ensure a neat appearance is maintained throughout the site and no parking spaces are blocked, *staff recommends* that if at any time there is a problem with bins outside of their enclosures, roll-out service through the local refuse collection company shall be required. In addition, to ensure that the level of solid waste collection service is adequate, *staff recommends* that evaluation of refuse service be done after the businesses have opened by the refuse company and the city Solid Waste Division.

Because the rear of the commercial buildings abut residential uses and because there will be frequent public access in this area, it is important the areas are kept neat and orderly. Thus, *staff recommends* no outdoor, overnight storage of product or material be allowed.

### **Signage**

The applicant is proposing to amend the existing sign program for the center. The sign program has provisions for monument signs, tenant ID signs, directional signs, banner signs and pedestrian kiosk signs. Based on building perimeter, street frontage, and allowances for a Regional Shopping Center, the Town Center shopping center can have 5,265 square feet of sign area (including a 25% bonus). Based on this number and the additional center signage a sign multiplier of .02 will be applied to all tenants. The allowed sign area does not include the one freestanding sign that will exceed 40 feet.

#### **Tenant Signs:**

As part of the proposed sign program, the applicant will be separating the sign designations between anchor tenant/single tenant buildings and the remainder of the tenants. Anchor tenants will be defined as those tenant spaces larger than 20,000 square feet. As proposed, the center will have three anchor tenants, Safeway, Mervyn's and Staples.

#### **Anchor Tenant and Single Tenant Building Signs:**

The applicant is proposing these types of signs to be internally illuminated pan channel letters with logo cabinets with varying sizes and colors. Staff is certain that increased design standards are necessary to preserve the design integrity of the shopping center. Too much variation with signage could degrade the exterior of the center. While staff does not want to restrict creativity with signs, *staff recommends* the following parameters:

- a) Signs shall not extend or be located outside of any sign bands.
- b) Letter height cannot exceed four (4) feet.

- c) Maximum of two (2) lines of copy, with the secondary line of copy not exceeding a height of two (2) feet.
- d) Logos cannot exceed eight (8) feet in height.

*Other Tenant Signs:*

The applicant is proposing these types of signs to be internally illuminated pan channel or halo lit reverse pan channel letters with logo cabinets with varying sizes and colors. Only one wall display per shop tenant frontage will be allowed. Similar to the anchor signs staff is certain that increased design standards are necessary to preserve the design integrity of the shopping center. Too much variation with signage could degrade the exterior of the center. While staff does not want to restrict creativity with signs, **staff recommends** the following parameters:

- a) Signs shall not extend or be located outside of any sign bands.
- b) Letter height cannot exceed two (2) feet, only a single line of copy shall be allowed.
- c) Logos cannot exceed two (2) feet in height.
- d) Signs shall be centered over the tenant space.

*Hanging Arcade Signs:*

These signs shall be located in the arcade and will hang perpendicular to the storefront. The applicant is proposing the signs be double-sided, be set in a 1 inch metal frame with vinyl copy/digital graphic. Only one of these signs shall be allowed per shop tenant. **Staff recommends** the following conditions for hanging signs to maintain the long-term design integrity of these signs:

- a) One hanging arcade signs allowed per tenant.
- b) No more than two (2) lines of copy allowed.
- c) Hanging arcade signs shall be non-illuminated.
- d) Hanging arcade signs shall retain the shape (oval) as shown on approved plans dated March 24, 2004.

In addition, to ensure that signs do not proliferate throughout the site, **staff recommends** that no signs be erected on any trees.

*Pedestrian Kiosk Signs:*

The applicant is proposing three (3) pedestrian directories (kiosks) throughout the site. One will be located at the west end of the site near the new fountain (near Safeway), one will be located in the center of the site (near Shops D) and the last will be located at the southwest corner of Mervyn's. The sign display will be on 11 foot tall architectural structures. The displays will have four (4) sides with each face having 15 square feet, for a total of 60 square feet for each kiosk.

*Banners:*

The applicant is proposing banners on poles throughout the site. The non-illuminated banners will either be 1 by 1 ½ feet or 1 by 3 feet in size depending on the pole that it is located on. To

ensure the banners do not become additional tenant signage, *staff recommends* that banners only be used to fly colors and not any type of tenant or center signage.

#### Directional Signs:

By ordinance directional signs are allowed and are not subject to sign area calculations. However, because the applicant is proposing to have tenant signage on the signs, they will be counted as part of allowed on-site signage. The applicant is proposing to have three (3) directional signs, two are proposed to be located on Town Center Drive off of Calaveras Boulevard, and one is proposed to be located at the intersection of Town Center Drive and Oakhurst Way near Shops A.

The signs will be located on 11-foot tall architectural elements, and will be on all four sides. Each face will have ten (10) feet of sign area, for a total of 40 square feet for each sign. The signs will be used to direct vehicles to major tenants on the site.

#### Freestanding Signs:

The applicant is proposing two (2) new freestanding signs (signs B.1 and B.2) and replacement of one (1) freestanding sign (sign A) on the site. The replacement sign would be located at the main Calaveras Boulevard entrance to the shopping center. The new signs would be located at the shopping center's entrance at Milpitas Boulevard and one more new sign at the corner of Calaveras Boulevard and Hillview Drive. The site is currently allowed one freestanding sign. There is a sign ordinance amendment request on this same agenda to allow for a total of three (3) freestanding signs for the site. Staff is supportive of the two additional freestanding signs for the site.

The replacement sign (sign A) will be approximately 34 feet tall, have two sign faces (each with a sign area of 302 square feet) and a distance of 36 inches between the sign faces. Any two-faced (front to back) freestanding sign is counted as one sign, if the distance between the two faces (facing 180 degrees away from each other) is no more than 24 inches apart. Because the sign faces on the replacement sign are 36 inches apart, the sign area of both faces are counted towards the sign area for this sign. The sign area would be calculated at 604 feet which exceeds the 450 square feet allowed for regional shopping center signs. Thus, *staff recommends* that the sign distance between the two faces be reduced to no more than 24 inches.

Staff is concerned with the sign that is proposed at the corner of Hillview and Calaveras Boulevard (sign B.1). Because of its close proximity to the larger sign at the Town Center entrance off of Calaveras Boulevard, staff feels that having two signs of such size in close proximity will add clutter to the Calaveras Boulevard streetscape. Thus, *staff recommends* that sign B.1 be reduced in size to match sign B.2 and that the curve be removed.

#### **Stormwater Runoff**

The applicant has submitted a stormwater control plan for the site, including construction and post construction Best Management Practices (BMP's).

#### Construction BMP's

The applicant has proposed a BMP plan that incorporates erosion and sedimentation control including catch basins and vegetative swales. However, prior to actual construction a more detailed BMP will need to be created, thus, *staff recommends* the applicant submit a

construction BMP to the City prior to any construction. The BMP shall include methods to reduce stormwater runoff including, but not limited to, covering of trucks, use of dust-proof chutes to load debris into trucks when feasible, watering of construction areas, sweeping of streets, hydroseed, and limitations on traffic speeds.

#### Post Construction BMP's

The applicant has proposed the following post construction BMP's:

- Landscape swales;
- Fossil filters (mechanical).

Staff is concerned with the fossil filters, while they work to clean and filter stormwater runoff; they only work when properly serviced. For proper maintenance, *staff recommends* the fossil filters be maintained on an annual basis.

In addition, another relatively simple stormwater runoff practice is to drain hardscape and paved areas into landscape areas. Thus, *staff recommends*, where appropriate that paved areas drain to landscape areas.

#### **Noise**

The project is located adjacent to an existing residential development. The project will include nighttime deliveries and new roof top equipment for the Safeway supermarket. In addition, the loading dock for the Safeway will be at the rear of the commercial building, in close proximity to the residential uses. Because of the expected impacts and the proximity of residential uses, an acoustical study was submitted that analyzed the noise levels from the proposed project.

#### Exterior Noise

The report identified that exterior outdoor noise levels would not be increased to any significant level. The exposure level would not exceed the 65 db (decibel) DNL (day-night noise level-weighted average noise level over a 24 hour period). The noise level is expected to be no higher than 62 db DNL in the rear yard areas. However, it was identified that the change in noise levels would exceed the 3 db threshold. Thus, the applicant will be required to provide mitigation to ensure that the change is less than 3 db. As identified in the noise study and *staff recommends* that this be accomplished by moving the future roof top units around and by adding a taller or more insulated roof top screen. In addition, *staff recommends* an additional noise study be performed to ensure that this 3 db maximum change is not exceeded.

In addition, because of the late night truck deliveries, the noise study and *staff recommends* that no more than two (2) refrigerated and two (2) non-refrigerated late night (between the hours of 10:00PM and 7:00AM) truck delivery be allowed daily.

The applicant is proposing to have late night and early morning deliveries throughout the night and early mornings. The applicant has done modifications to the site to mitigate the late hour deliveries; installing a sound wall to enclose the loading dock, shifting the loading area away from the residences as much as possible, and proposing a delivery route that will minimize the residences exposure to the vehicles to the greatest extent possible. Even with these proposals, staff has concerns with deliveries at these hours of the night. Previous experiences with other businesses with late night/early morning deliveries have shown that even one delivery at that

time of the day could trigger multiple complaints from residences living nearby, especially when the deliveries occur on a frequent basis. Thus, to accommodate the business operations and still remain sensitive to those living in the neighboring area, **staff recommends** deliveries be restricted to using the Calaveras Boulevard access for entry and exit.

### Construction Noise

A project of this size will undergo a considerable amount of construction activities, from site preparation and grading to structural construction. Associated with the construction are various noise generators from equipment. The noise analysis included a section on construction activity with the following recommendations to ensure that construction noise would not impact any neighboring uses. Thus, **staff recommends** noisy (mechanical equipment and the like) operations occur between 7:00AM and 5:00PM, Monday through Friday, demolition occur in phases beginning from the front to the rear (so that building shells closer to the residential areas can act as noise barriers, diesel powered equipment operated no closer than 115 feet from any residences, dirt berming and stocking of materials. It should be noted that the City of Milpitas allows construction activities to occur Sunday through Saturday, from 700AM to 700PM, with no construction allowed on holidays.

### **Transportation/Traffic**

As part of any project in the City, staff will examine the complexity and size of the project to determine whether further traffic analysis is required. In addition, if it can reasonably be expected that the proposed project will generate over 100 *new peak hour trips* or will impact City of Milpitas or CMP (Congestion Management Program) intersections, a comprehensive Traffic Impact Analysis is required. After preliminary review, staff determined that the project will require further review, both because of a new high trip generating use (a supermarket) and because of the proposal of new residential units at the site.

The results of the traffic analysis was that the project will not significantly impact City of Milpitas intersection level of service standards, CMP intersection level of service standards, and CMP freeway level of service standards, in large part because the proposed project is a redevelopment of an existing site, thus, there is already existing trips generated at the site.

The traffic study did identify a potential problem spot as a result of the project. It identified the intersection of Town Center and Hillview Drive as posing potential problems in regards to automobile stacking along Hillview Drive and potentially unsafe interaction of vehicles at this intersection. Thus, **staff recommends** the applicant make improvements to Hillview Drive to improve traffic operations at the entrance to the shopping center. Improvements shall include the extension of double lefts on southbound Hillview from the driveway to Calaveras Boulevard. This will cause the reconfiguration of the left lane on northbound Hillview to become an exclusive left turn into the shopping center. A short merge lane will also be required for vehicles leaving the shopping center and turning left onto Hillview Drive. These modifications are expected to prevent queuing into any intersection in the immediate area. In addition, because future traffic loads may require a traffic signal or other modifications to this intersection, **staff recommends** the applicant bond for the design and construction of a traffic signal and/or geometric improvements should the need be realized within five (5) years. The applicant shall also be required to submit annual monitoring of this intersection over the next five (5) years.

### **Park Fees**

All residential developments in the City are required to provide park and open space at a ratio of 5 acres per 1,000 people. Up to 40% of the public park and open space requirement may be provided in the form of private recreational space, which would include on-site usable common areas or private open space. Based on the 65 residential units proposed, the development would be required to provide the following:

0.60 public acres

0.40 private acres

**1.00 park acres**

The 0.40 private acres required on-site would be met with on-site amenities including interior courtyards and open multi-purpose areas. The public acres would be satisfied with the payment of a park-in-lieu fee.

The park-in-lieu fee calculation is based on the fair market value of one acre of land in Milpitas. As provided for in MMC XI-1-9.07 the fair market value, for the purposes of this fee calculation will be determined annually by City Council resolution. Last year the Council commissioned a study to determine the average fair market value of land in Milpitas. The study was recently completed and found that the average fair market value of one acre of land is currently \$1.3 million. Staff will be drafting a resolution for Council adoption to establish this value for the fee calculation. Based on the valuation study's conclusion, the park in-lieu fee for this project would be \$772,850.00.

### **Neighborhood/Community Impact**

Staff has received numerous letters, emails, and phone calls expressing concerns with the project. General concerns included impacts to shopping center tenants, the need for another supermarket in this area of the city, the loss of the cinema, and one response was hopeful that the redevelopment would include places for local and/or professional artisans.

The main points of concern are listed below:

- ☐ Noise – From delivery trucks
- ☐ Traffic/Safety – Increased traffic from the Safeway and their customers
- ☐ Site selection – The need of an additional supermarket with many already in close proximity
- ☐ Creating an undesirable “place” representative of the Town Center
- ☐ Landscape modifications – The choice of a palm tree theme as inappropriate
- ☐ Long term maintenance and upkeep of the site
- ☐ Vandalism

Staff has completed an environmental review that did examine the noise impacts on the adjacent residential properties. Mitigation measures were identified to reduce impacts and keep noise levels in conformance with the General Plan. A traffic study was also completed that identified both on-site and off-site impacts as a result of the development. The study identified that traffic

for the shopping center would continue to use the three main exits off of Milpitas Boulevard, Hillview, and Calaveras. With appropriate way-finding signs, it is expected that the circulation will avoid using Beresford Village as a cut-through.

Staff has worked with the applicant to create a project that will improve the look and feel of the Town Center from its current condition to one that will eventually be vibrant and an exciting, inviting place to be. The addition of increased landscaping will reduce the amount of hardscape throughout the site, and the addition of residential will provide a use that is similar to the Beresford Village development.

The location does conditionally allow a supermarket at this site, from a land use perspective, as conditioned, it is an appropriate use for the site.

Staff does not feel that a supermarket will cause an appreciative increase in vandalism activities. While staff acknowledges that the project will increase the amount of people in the area, it is not the city's intent to continue a shopping center that is relatively unoccupied. In addition, the increase in customers in the shopping center will act as a deterrent to these types of activities from occurring.

Staff has conditioned that this project create a landscape maintenance plan for the site, which will be kept at the City and set standards for long term maintenance and will help ensure that the site is maintained.

To ensure that the property is maintained and that project conditions of approval are adhered to, **staff recommends** that if any of the approved conditions are violated, the use permit and S-Zone approval shall be brought back to the Planning Commission for review.

#### Farmers Market

The applicant has informed staff that the redevelopment of the site will require displacement of the popular weekly farmers market. While the parking lot could still physically accommodate the market, the logistics and operations of the uses would not allow the market to remain at this site. Because the supermarket will be a 24-hour operation, parking and access will be required around the clock, therefore a farmers market blocking required parking and access would not be able to co-exist at this location. The applicant is evaluating possible relocation within the Town Center area. If unsuccessful, the City will assist with identifying sites to keep this public benefit in the City.

#### Neighborhood Meeting

A neighborhood meeting occurred in the evening on January 29, 2004 at the Town Center. The meeting was well attended with over 50 people in attendance. There were approximately 22 speakers that asked questions and voiced their concerns over the project. While there was a wide variety of topics discussed, ranging from site layout to delivery hours, the main concern was in regards to noise impacts. More specifically for late night deliveries, parking lot cleaning, garbage pickup, and construction noise. While Safeway identified that they would be doing late night deliveries, residents were concerned about the impacts this would have on their quality of life. While the applicant stated that they completed an acoustical analysis and had laid out parameters that would allow them to be in conformance with the noise ordinance, speakers were still concerned that even though the noise would be intermittent, it would still be more than



enough to wake them up from their sleep. At that time, the applicant promised to look into the issue of late night deliveries, including but not limited to, restricting the delivery route through Calaveras Boulevard from 8:00PM rather than from 10:00PM, look at extending the loading area wall further to the southwest, checking the timing of the parking lot sweeper to ensure that they are not operating at late night hours, and to reexamine the hours of garbage pickup.

Currently, the City does not have limitations on the hours of garbage pick up, similar to late night deliveries in commercial zones. However, as part of the franchise agreement between the City and service provider, it is agreed that pick up shall only occur during the hours of 4:00AM to 7:00PM from October 1 to March 31, and during the hours of 3:00AM to 7:00PM from April 1 to September 30, with the proviso that all efforts be made to avoid hours before 7:00AM.

In addition, during the neighborhood meeting a Safeway representative made a statement that this project will be designed and operate at a high level of standard that will at least be the same as the new Safeway located in Fremont (at Mission and Warm Springs Boulevard).

In general the project will add a complementary retail use to the Town Center and will enhance the attraction of the site and will improve a site that was and still is, envisioned as the city center. With the conditions of approval, staff does not believe that this project will have a negative impact on the neighborhood or the community.

#### **Owner Participation Agreement (OPA)**

A draft of the Owner Participation Agreement (OPA) between the Redevelopment Agency and the applicant has been provided in the Planning Commission's packet as background information. The OPA serves as the legal vehicle and instrument to execute the provisions, terms and conditions between the Agency and the applicant. The Agency will be taking final action on the OPA at its April 6<sup>th</sup> meeting. The draft agreement includes the following:

- ❑ The construction of 65 for-sale townhome units with landscaping and street improvements.
- ❑ The provisions for the developer to provide 16 moderate affordable income units, including the Agency's contribution of \$800,000 (\$50,000/per unit) for first-time homebuyers down payment assistance.
- ❑ The provisions for the Agency to provide for the rehabilitation of 4 existing off-site units with the restriction that they remain affordable to very-low income households.
- ❑ The remodeling of the Town Center including the 54,000 square foot Safeway Supermarket.
- ❑ On and off-site improvements that benefit the public to be funded and/or constructed by the developer that have a value of up to \$392,000.

The agreement also includes a schedule of performance, which identifies the required actions to be taken by the Agency and developer and specific dates with performance standards.

#### **Conformance with CEQA**

An Initial Study and Draft Mitigated Negative Declaration were prepared for the project. The commenting period began on January 6, 2004 and closed on January 25, 2004. Potential environmental impacts from the project include construction and project-related issues from

noise, dust, and stormwater runoff. The proposed mitigation measures will reduce the impacts to a less than significant level.

At the time of the preparation of the staff report, no comments were received. Any additional comments received will be presented at the Planning Commission hearing. Staff recommends adoption of the Mitigated Negative Declaration with the mitigation measures incorporated therein.

### **RECOMMENDATION**

Close the public hearing and recommend approval of Site and Architectural permit SZ2003-12 & SZ2003-13, Use Permit No's. UP2002-42 & 43, UP2003-57 & 58, UP2004-1 and adopt Mitigated Negative Declaration No. EA2003-12, based on findings and special conditions listed below.

### **FINDINGS FOR APPROVAL OF SZ2003-12, UP2002-42, UP2004-4 & EA2002-12 (Commercial Site and Architecture and Safeway and Coffee cafe)**

1. The Initial Study and Mitigated Negative Declaration (EIA No. EA2002-12) prepared for this project represents the independent review of the City of Milpitas Planning Staff and Planning Commission.
2. The project, as proposed to be mitigated, will not create any significant environmental impacts as defined by the California Environmental Quality Act.
3. The project is consistent with the Milpitas General Plan by redeveloping an existing retail center, providing enhanced pedestrian and vehicular circulation within the site, and improving connectivity with adjacent uses.
4. As conditioned, the project meets the purpose of the "S" Combining District by promoting orderly, attractive and harmonious development, as the project will incorporate attractive architectural elements on the buildings and will have an improved landscape treatment for the site.
5. As conditioned, the project is not anticipated to result in a negative community impact as the project is incorporating mitigation measures in regards to noise and dust and conditions of approval to improve traffic flow.
6. Because the total number of proposed parking was shown to be adequate per the parking analysis, no adverse parking impacts are anticipated with this use.
7. The proposed development is consistent with the City of Milpitas Zoning Ordinance in terms of land use for the Town Center zoning district as the proposed supermarket is a conditional use and the retail space is a permitted use.
8. As conditioned, the proposed supermarket, restaurant, and retail space will not be detrimental or injurious to the public health, safety, and general welfare to future residents and to the surrounding community because the project will incorporate a sound wall, restricted delivery times, improve an under-performing shopping center, will make landscaping improvements to the site and will provide improved pedestrian access to and within the site.

9. As conditioned, the layout of the site, design of the proposed building, and landscaping are compatible and aesthetically harmonious with the surrounding area and will improve the aesthetics of the site.

**FINDINGS FOR APPROVAL FOR UP2003-57 & 58 AND UP2004-1 (*Freestanding Signs*)**

1. The three new freestanding signs are in conformance with the allowed signage of the Town Center District.
2. The proposed signs are compatible and harmonious with the redevelopment of the Town Center.
3. The proposed signs provide identity and way finding for the Town Center from major streets as the buildings are set back on the property.

**FINDINGS FOR APPROVAL FOR SZ2003-13, UP2002-43 & EA2002-12 (*Residential*)**

1. The Initial Study and Mitigated Negative Declaration (EIA No. EA2002-12) prepared for this project represents the independent review of the City of Milpitas Planning Staff and Planning Commission.
2. The project, as proposed to be mitigated, will not create any significant environmental impacts as defined by the California Environmental Quality Act.
3. The project is consistent with the Milpitas General Plan by adding residential uses in the Town Center district with enhanced pedestrian and vehicular circulation within the site, and improving connectivity with adjacent uses.
4. The project is consistent with the Milpitas Housing Element by providing 20 affordable units, of which 4 will be at the very low affordable level.
5. As conditioned, the project meets the purpose of the "S" Combining District by promoting orderly, attractive and harmonious development, as the project will incorporate horizontal and vertical variation and will have an improved landscape treatment for the site.
6. As conditioned, the project is not anticipated to result in a negative community impact as the project is incorporating mitigation measures in regards to noise and dust and conditions of approval to improve traffic flow.
7. Because the total number of proposed parking was shown to be adequate per the parking analysis, no adverse parking impacts are anticipated with this use.
8. The proposed development is consistent with the City of Milpitas Zoning Ordinance in terms of land use for the Town Center zoning district, as the proposed residential density is a conditional use.
9. As conditioned, the proposed residential units will not be detrimental or injurious to the public health, safety, and general welfare to the surrounding community because the project will be similar to other adjacent uses and will include trash enclosures.

**RECOMMENDED SPECIAL CONDITIONS FOR SZ2003-12 (Commercial Site and Architecture Review)**

**General**

1. **General** - This approval is for the redevelopment of the Town Center Shopping Center, including a new supermarket, new freestanding signs, new sign program, landscaping and other site improvements as per approved plans dated March 24, 2004 except as may be otherwise modified by these conditions of approval. Minor changes, as per Sec. 42-10-2 of the Milpitas Zoning Ordinance, to approved plans may be approved by the Planning Division staff. (P)
2. **General** - The proposed project shall be conducted in compliance with all applicable federal, state, and local regulations. (P)
3. **Conditional Approval of S-Zone and Use Permit** – Approval of the S-Zone and Use Permit is conditional on the Redevelopment Agencies Council approval of the proposed Owners Participation Agreement (OPA) between the applicant and the Agency. (P)
4. **General** - The property owner shall be responsible for compliance with all conditions of approval and adhering to contents of all approved plans for S-Zone application SZ2003-12. (P)
5. **Landscape Maintenance Agreement**- Prior to any occupancy (or as otherwise specified in the applicants' phasing plan) of the project the applicant shall enter into an Encroachment Permit Agreement, with the City, or if necessary CalTrans, for the purpose of maintaining the landscaping installed by the applicant within City or CalTrans right of way, to City standards, along the following streets:
  - ❑ Both sides of Milpitas Boulevard between Calaveras Boulevard and the commercial property north of Town Center on the west side and between Calaveras Boulevard and Town Center Drive on the east side.
  - ❑ Both sides of Hillview Drive from Berryessa Creek to Calaveras Boulevard.
  - ❑ North side of Calaveras Boulevard from Milpitas Boulevard to Hillview Drive.

The City anticipates that it may form an assessment district for, among other purposes, the purpose of maintaining the roadway landscaping along the streets listed above. In the event that the City forms an assessment district for such purposes, the applicant, on behalf of itself and its successors in interest, by accepting the permit to which this condition is attached hereby waives any rights it may have to protest its inclusion in an assessment district the purpose of which includes the maintenance of the street landscaping listed above. The applicant, on behalf of itself and its successors in interest, by accepting the permit to which this condition is attached further waives any right it may have to protest or submit a ballot against the amount of the assessment, provided, however, that the foregoing waiver shall apply only to the extent that the assessment that would be imposed on the applicant's property does not exceed \$50,000 per year, without considering any inflation adjustment factor that may be contained in the assessment. In addition, the applicant, on behalf of itself and its

successors in interest, agrees that in the event it fails to submit a ballot in favor of the assessment, the City may treat this failure to submit a ballot as the submission of a ballot in favor of the assessment. (see COA#14)

As with all project conditions of approval, this condition shall run with the land and any subsequent landowners. (P)

6. **Trail Improvements** - Prior to any building permit issuance, permit plans for construction of the following trail enhancements shall include special paving treatments, increased trees with uplighting and bollard lighting of the pedestrian trail from the residential area to the bridge touchdown area along Berryessa Creek to the approval of the Planning Division. (P)
7. **Parking Lot Improvements** - Redesign northwest corner of the parking field and drive aisle (near the proposed circular fountain area) to improve vehicular circulation and create perpendicular intersections in the area.
8. **Parking Lot Improvements** - Prior to issuance of certificate of occupancy, the applicant shall slurry seal, re-stripe, and repaint any faded or missing parking lines, stop bars, lines or signs throughout the entire parking lot of the Town Center (including the Mervyn's site). (P)
9. **Screening of Utilities** - On-site utility transformers, boxes, etc. located at the front of the site shall be placed underground (subsurface vaults) or be located at the rear of the property and screened from public view in a manner to the approval of the Planning Division. For new or relocated transformers or utility boxes on existing developed sites, refer to Section XI-10-42.10-2 of the Milpitas Municipal Code. (P)
10. **Bicycle Parking** - Prior to building permit issuance, permit plans shall show where bicycle parking is located on the site (minimum of three bicycle racks). (P)

#### Landscaping

11. **Landscape Plan** - A complete landscaping plan shall be submitted and approved by the Planning Division prior to building permit submittal. The plan shall include details of the following:
  - a) The plan shall indicate location and type of trees, shrubs and ground cover, including sizes and quantities for all old and new unpaved areas. The applicant is encouraged to utilize mature trees at key areas or focal points on the site to complement the existing or proposed on-site structures. The landscape plan shall comply with City Council Ordinance No. 238 (An ordinance of the City of Milpitas regulating efficient water use for new or rehabilitated landscapes and existing landscapes)
  - b) Increased amenities shall be provided along all portions of the pedestrian trail (commercial and residential portions), to further delineate and connect all broken segments of the trail.
  - c) Landscaping strips shall be incorporated, where clustering of trees occurs, throughout the parking lot where trees are proposed, rather than diamond planters that decrease the long-term viability of the trees.
  - d) Mature trees that are to be removed shall be replaced at a 1 to 1 ratio with a minimum tree size of 24-inch box. Any protected trees shall be replaced at a 1 to 1 ratio with a

minimum tree size of 48-inch box. The location of the trees shall be to the approval of the Planning Division. If the ratio cannot be met on-site, the developer shall plant the trees on the Mervyn's property, or make a contribution equal to the replacement value of the trees into the City's tree fund. The proposed canary island palms shall be credited as a protected tree.

- e) All palm trees planted on-site shall be a minimum size of 12 feet of clear trunk.
- f) Uplighting shall be as shown on plans. Palm trees along the main entrance into the Town Center off of Calaveras Boulevard shall be uplit with ground mounted light fixtures.
- g) No uplighting of any palm trees located along Calaveras Boulevard.
- h) All new planter areas (including areas surrounding the planters) in the parking lot and within the entire street sidewalk areas shall incorporate the use of structural soil to ensure proper flora growth and to prevent damage to surrounding paved areas.
- i) All mechanical equipment and boxes shall be screened from all views (public and private).
- j) All planter areas shall be serviced by an automatic system with low volume drip, spray or bubbler emitters.
- k) Pedestrian scale lighting should not exceed a height of 16 feet.
- l) The landscape plan shall include year round seasonal plantings in undulating planting beds in the understory along Calaveras Boulevard. Said plantings shall be parallel to the sidewalk and shall include small berming in the beds.
- m) The landscape plan shall show removal of one row of palms behind the public sidewalk along Calaveras Boulevard. The remaining row shall be increased in spacing to 50 feet on-center.

12. **Landscape Planting** - Prior to issuance of an occupancy permit on this site, the required landscaping shall be planted and in place.

13. **Landscape Maintenance** - All required landscaping and paved areas shall be replaced and continuously maintained as necessary to provide a permanent, attractive and effective appearance. To ensure this occurs, prior to issuance of building permits, the applicant shall submit a maintenance program, to the approval of the City, for on-site landscaping and parking fields for the Town Center. This maintenance program shall also include annual maintenance of any fossil filters or stormceptors, paving, striping and wheel stops, as well as booting, pineapple/latticing and bearding of palms. The Town Center shall be maintained as per the approved maintenance program in perpetuity.

14. **Maintenance Standard for Street Trees** - A plan for the landscaping referenced in condition of approval no. 11, with the exception of any streetscape along City Hall frontage, shall be submitted for review and approval prior to any building permit issuance establishing minimum standards for the applicant's maintenance of said landscaping. Maintenance responsibility shall continue through the life of the project and run with the land or until such time as the assessment district referenced in condition of approval no. 5 is created. (P)

Loading/Garbage

15. **Loading Walls** - Prior to building permit issuance, permit plans shall show buffer walls, or other form of screening between delivery areas and residential areas to the full height of any delivery vehicles. (P)
16. **Storage of Garbage** - All garbage or recycling bins shall be stored in enclosures. (P)
17. **Location of Garbage Bins** - If the City, at any time, finds that trash bins are not properly stored in enclosures, roll-out service shall be required. (P)

Lighting

18. **Lighting Program** - Prior to building permit issuance, an exterior lighting program (including building accent lighting) shall be submitted and approved by the Planning Division for the commercial portion of the project. (P)
19. **Lighting Glare** - Exterior lights shall be shielded to prevent light spillage onto residential areas. (P)

Architecture

20. **Building Façade** - Prior to building permit issuance, the applicant shall modify the building façade of the south elevation of Shop "E" to add architectural interest to this unarticulated elevation. (P)
21. **Safeway Exterior** - Prior to building permit issuance, permit plans shall be submitted and approved by the Planning Division to improve the appearance of the Safeway exterior (arcade inner wall area), through the use of stucco or a tile wall above the splitface base or stucco or tile wall over a stone or stone tile base. (P)
22. **Trellis** - All trellis used throughout the project shall be of metal construction. (P)
23. **Roof-top Equipment** - All roof-top equipment shall be shielded from view in a manner to the approval of the Planning Commission or its designee as specified in Section XI-10-42.10-2 of the Milpitas Municipal Code. Prior to the issuance of any permit for any roof-top equipment which projects above the height of any existing parapet wall or screen, detailed architectural plans for the screening of this equipment and/or line-of-sight view analysis demonstrating that the equipment will not be visible from surrounding view points shall be reviewed and approved as specified in Section XI-10-42.10-2 of the Milpitas Municipal Code, in order to assure the screening of said equipment is in keeping with and in the interest of good architectural design principles. (P)

Sign Program

24. **Sign Program** - All signs shall conform to the approved Sign Program. Prior to any sign approval a revised sign program shall be submitted to the City. (P)
25. **Allowable Signage** - Total signage allowed for the site is 5,265 square feet. (P)
26. **Illuminated Signage** - No illuminated signs shall be allowed in locations that face residential uses. (P)
27. **Cabinet Signs** - No cabinet signs shall be allowed, except when used for logos. (P)

28. **Anchor Tenant Signage** - The following shall apply to anchor tenants (those occupying more than 20,000 square feet) and single tenant buildings: (P)
- a) Signs shall not extend or be located outside of any sign bands.
  - b) Letter height cannot exceed four (4) feet.
  - c) Maximum of two (2) lines of copy, with the secondary line of copy not exceeding a height of two (2) feet.
  - d) Logos cannot exceed eight (8) feet in height.
29. **Other Tenant Signage** - The following shall apply to other tenants in the shopping center: (P)
- a) Signs shall not extend or be located outside of any sign bands.
  - b) Letter height cannot exceed two (2) feet, only a single line of copy shall be allowed.
  - c) Logos cannot exceed two (2) feet in height.
  - d) Signs shall be centered over the tenant space.
30. **Hanging Arcade Signage** - The following shall apply to hanging arcade signs: (P)
- a) One hanging arcade signs allowed per tenant.
  - b) No more than two (2) lines of copy allowed.
  - c) Hanging arcade signs shall be non-illuminated.
  - d) Hanging arcade signs shall retain the shape (oval) as shown on approved plans dated March 24, 2004.
31. **Banners** - Banners shall not be used to display any tenant or center signage. (P)
32. **Signs on Flora** - No signs shall be erected on any trees. (P)

Mitigation Measures

33. **BMP – Demolition and Grading** - The following shall be noted on demolition and grading plans and implemented during demolition or grading activities (P, Mitigation Measure 1):
- a) Watering should be used to control dust generation during demolition of structures and break-up of pavement.
  - b) Cover all trucks hauling demolition debris from the site.
  - c) Use dust-proof chutes to load debris into trucks whenever feasible.
34. **BMP** - The following shall be noted on plans and implemented during construction activities (P, Mitigation Measure 2):
- a) Water all active construction areas at least twice daily.
  - b) Watering or covering of stockpiles of debris, soil, sand or other materials that can be blown by the wind.
  - c) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.



- d) Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
  - e) Sweep daily (preferably with water sweepers) all paved access road, parking areas and staging areas at construction sites.
  - f) Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
  - g) Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
  - h) Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
  - i) Limit traffic speeds on unpaved areas to 15 mph.
  - j) Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
35. **BMP** - Measures shall be incorporated into project plans prior to issuance of any building permits (P, Mitigation Measure 3):
- a) To the extent feasible, minimize the amount of run-off that drains directly to the storm drain system. Possible solutions may include the following mitigation measures:
  - b) Directing run-off to landscaped areas for natural infiltration.
  - c) Direct run-off to catch basins or holding areas to capture runoff and allow infiltration into the soil.
  - d) Install fossil filters or alternative type of filter process to clean the run-off prior to discharge.
  - e) Install retention and/or detention ponds where feasible.
  - f) Re-grade the site so that most surface run-off will be directed to proposed landscaped areas.
36. **BMP** - Measures shall be implemented during final project design and construction (P, Mitigation Measure 4):
- a) To the extent feasible, design the project facilities to direct runoff into constructed shallow swales to capture runoff and allow it to infiltrate into the soil. Incorporate design concepts recommended in the Bay Area Stormwater Management Agencies Association's "Start at the Source" Design Guidance Manual for Stormwater Quality Protection (BASMAA 1999);
  - b) Implement best management practices (BMPs) for the control of erosion during the temporary stockpiling of excavated soils, including, but not limited to the use of fiber rolls and installing sand or gravel bags to minimize runoff impacts to halt runoff from entering the storm drainage system;
  - c) Applicant shall submit plans depicting non-structural and structural post-construction BMPs for maximum feasible implementation pursuant to the City of Milpitas Urban Runoff Management Program.

37. **Acoustical Analysis** - A detailed acoustical analysis of the roof-top mechanical equipment at the Safeway store shall be submitted, once a mechanical plan is developed, but prior to any building permit issuance. If the study results in an exceedance of 51dB DNL at the Beresford Village residences (exterior), a higher acoustical screen or re-location of the equipment on the roof will be required to mitigate the impact. (P, Mitigation Measure 5)
38. **Late Night Deliveries** - No more than two (2) refrigerated and two (2) non-refrigerated truck delivers shall be allowed between the hours of 10:00PM and 7:00AM. (P, Mitigation Measure 5)
39. **Noise – Construction** - To following actions shall be implemented during all construction activities. (P, Mitigation Measure 7):
- a) Demolition of buildings shall occur in phases with the walls of the building closest to existing residences being removed last as the walls can act as noise barriers.
  - b) Schedule noisy operations for the daytime hours of 7:00AM to 5:00PM Monday through Friday.
  - c) All diesel powered equipment should be located more than 115 feet from any residence if the equipment is to operate more than several hours a day.
  - d) Dirt berming and stockpiling materials whenever possible to help reduce noise to sensitive receptor locations.
  - e) Proper construction equipment shall be used including, but not limited to, scrapers for earth removal, backhoe for backfilling, motor grader, nail guns and shielded or enclosed power saws.

Miscellaneous

40. **Violation of Conditions** - If at any time a violation of any approved condition occurs, the use permit and S-Zone approval shall be brought back to the Planning Commission at a public hearing to re-evaluate the use and all conditions for possible modification, suspension or revocation. (P)
41. **Fill** - In the event that fill of over 18 inches above the natural grade is required at the rear of the side property line, a grading plan shall be reviewed and approved by the Planning Division prior to the issuance of a grading permit. (P)
42. **Private Job Account** - If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
43. **Private Job Account** - If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P)
44. **Construction Phasing Plan** - Prior to building permit issuance, a construction phasing plan shall be submitted that specifies in which phases improvements required as part of the project's conditions of approval shall be completed. The phasing plan shall specify which required improvements (by condition reference) must be completed prior to issuance of a Certificate of Occupancy for structures in each phase of the plan. The timing of all

improvements specified in the project's conditions of approval, with the exception of those related to traffic, may be modified administratively via the phasing plan. (P)

45. **Pre-Construction Meeting** – Prior to any permit issuance the applicant shall have a pre-construction meeting with the City. (P)

Engineering Conditions

46. **Water and Sewage** - The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
47. **Water, Sewage, and Storm Facilities** - Prior to issuance of any building permits, developer shall obtain approval from the City Engineer of the water, sewer and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)
48. **Easements** - Prior to building permit issuance, the developer shall dedicate necessary public service utility easements, easements for water and sanitary sewer purposes, and comply with other requirements as shown on Engineering Services "S" (dated 2/1/2004). (E)
49. **Undergrounding** - In accordance with Milpitas Municipal Code XI-1-7.02-2, the developer shall underground all existing wires and remove utility poles within the subdivision with the exception of transmission lines supported by metal poles carrying voltages of 37.5K. All proposed utilities within the subdivision shall also be undergrounded. (E)
50. **Grading and Drainage Study** - Prior to any building permit issuance, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to final inspection/occupancy permit issuance. (E)
51. **Public Improvements** - Prior to any building permit issuance or map recordation (whichever occurs first), the developer shall: (E)
- a) Obtain design approval and bond for all necessary public improvements including but not limited to Hillview/Town Center Drive intersection modification as identified on the approved Traffic Impact Analysis report and Engineering Services Exhibit "S" (dated 2/1/2004), water main, sewer main, fire hydrants, public utility relocation/removal/abandonment, sewer and water services. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred)

upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. These improvements must be installed within 18 months of the issuance of any building permits, unless delayed by agencies other than Milpitas, such as Caltrans.

- b) In addition bond for the design and installation of a traffic signal and/or necessary geometric improvements to improve operations at the Hillview/Town Center Drive intersection. The developer shall be responsible for annual monitoring of this intersection for a period of five years (from the date of this approval) during months of normal traffic flow (April or October). The annual monitoring report shall be submitted to the City for review and approval. The developer shall complete the construction of the improvements within 18 months of observed queue lengths blocking intersections during 15 percent or more of the traffic signal cycles during an observed hour. The improvements shall be designed and constructed to satisfaction of the City Engineer.

52. **SWPPP** - The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities that disturb 1 acres or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site-monitoring plan must also be developed by the applicant, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)

53. **Sight Distance** - The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. No permanent structure is allowed within City's easement or right of way. (E)

54. **Public Utilities** - All existing on-site public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements. (E)

55. **Submittals** - The developer shall submit the following items with the building permit application and pay the related fees prior to final inspection (occupancy) by the Building Division: (E)

- a) Water Service Agreement(s) for water meter(s) and detector check(s).
- b) Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s).

**56. Landscaping** - In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall: (E)

- a) Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.
- b) Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package.
- c) Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal

**57. Recycled Water** - Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240), *for the sites adjacent to the recycle water main* the landscape irrigation system must be designed to meet the City's recycled water guidelines and connect to recycled water system when available. *The developer shall extend the recycle water mains into the site and retrofit the entire Town Center's landscaped area for recycled water connection, to benefit from the lower water rate and drought proofing limitations.* Contact the Land Development Section of the Engineering Division at (408) 586-3329 for design standards to be employed. (E)

**58. Recycled Water** - To meet the recycle water guideline the developer shall: (E)

- a) Design the landscape irrigation for recycled water use. Use of recycled water applies to all existing rehabilitated and/or new landscape adjacent to existing or future recycled water distribution lines (except for rehabilitated landscape less than 2500 square feet along the future alignment).
- b) Design the irrigation system in conformance to the South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. Prior to building permit issuance the City will submit the plans to the Department of Health Services (DOHS) for approval; this approval requires additional processing time. The owner is responsible for all costs for designing and installing site improvements, connecting to the recycled water main, and processing of City and Department of Health Services approvals. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain copies of design guidelines and standards.
- c) Protect outdoor eating areas from over spray or wind drift of irrigation water to minimize public contact with recycled water. Recycled water shall not be used for washing eating areas, walkways, pavements, and any other uncontrolled access areas.

**59. Solid Waste** - Prior to occupancy permit issuance, the developer shall construct trash enclosures, designed per the Development Guidelines for Solid Waste Services. City review/approval is required prior to construction of the trash enclosure. Compactor area and the new enclosures shall drain to the sanitary sewer. (E)

60. **Solid Waste** - Prior to occupancy permit issuance for the commercial development, the developer shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI: (E)
- Maintain an adequate level of service for trash collection.
  - Maintain recycling services including separate services for beverage containers.
  - If any food establishment is proposed, accommodation for tallow account is required.
61. **Solid Waste** - After the start of business, the solid waste service shall be evaluated by BFI commercial representative to determine the adequacy of the service level. If it is found to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234.
62. **Discharge of Pollutants** - Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit. (E)
63. **Encroachment Permits** - Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)
64. **Submittals to Affected Agencies and Private Parties** - Prior to any building permit issuance, developer shall submit plans to all affected agencies and private parties, including but not limited to SFPUC, PG & E, SCVWD and Mervyn's, and obtain their approval to construct the proposed improvements upon their easements or properties. Copies of these approvals, permits, conditions and requirements must be submitted to the City of Milpitas Engineering Division. (E)

**RECOMMENDED SPECIAL CONDITIONS FOR UP2003-57 & 58 & UP2004-1**  
**(Freestanding Signs)**

- General** - This approval is for two (2) new freestanding signs and one (1) replacement of the existing freestanding sign at the Town Center Shopping Center as per the approved plans dated March 24, 2004 except as may be otherwise modified by these conditions of approval. The additional signs are conditionally approved, per the City Council approval of the sign ordinance amendment (P-ZT2003-5). (P)
- Sign Modifications** - Prior to any building permit issuance, permit plans shall be submitted to the Planning Division for approval and shall include the following: (P)
  - The height and size of sign B.1 shall be similar to sign B.2, located at Town Center Drive and Milpitas Boulevard and be redesigned to remove the curve. (P)
  - The two faces of sign A, at Calaveras Boulevard shall be no more than 24 inches apart; otherwise, signage will be out of conformance for the site. (P)

3. **Private Job Account** - If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
4. **Private Job Account** - If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P)
5. **Site Distance** - The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping and signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. No permanent structure is allowed within City's easement or right of way. (E)
6. **Structure in Easements** - No permanent structure is permitted within City's existing or proposed easements. (E)
7. **Encroachment Permit** - Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)

**RECOMMENDED SPECIAL CONDITIONS FOR USE PERMIT NO. UP2002-42**  
**(Supermarket and Coffee Cafe)**

General

1. **General** - This approval is for a new 24-hour supermarket at the Town Center Shopping Center, including the sale of all types of alcoholic beverages, with an internal 32-seat coffee café, as per the approved plans dated March 24, 2004 except as may be otherwise modified by these conditions of approval. Any change in nature of the operation shall require review and approval by the Planning Commission of an amendment to this Use Permit.
2. **General** - The proposed project shall be conducted in compliance with all applicable federal, state, and local regulations. (P)
3. **Alcohol Sales** - Alcohol sales shall be restricted to the hours of operation as mandated by the Alcohol and Beverage Control.
4. **Lighting** - Exterior lighting fixtures in the exterior arcade area shall be decorative. (P)
5. **Displays** - Exterior displays (of product) are only allowed between the two doorways at the front of the building, with signage to be located only on the display carts. (P)
6. **Deliveries** - No more than two (2) refrigerated and two (2) non-refrigerated truck deliveries shall be allowed between the hours of 10:00PM and 7:00AM. (P, Mitigation Measure 5)
7. **Delivery Route** - All deliveries shall use the Calaveras Boulevard access into the shopping center for both entry and exit. (P)
8. **Loading Dock** - The height of the rear loading area sound/screen wall shall be built no shorter than the height of the tallest delivery vehicle. (P)
9. **Loading Dock** - The length of the loading dock screenwall shall be extended 10 feet. (P)

- 10. Outdoor Storage** - No outdoor storage of product or material shall be allowed except as otherwise allowed these conditions of approval. (P)

Shopping Carts

- 11. Shopping Cart Collection** - All shopping carts shall be collected on a regular basis to prevent the blockage of parking spaces. (P)
- 12. Cart Collection Agreement** - Prior to issuance of the certificate of occupancy, the applicant shall submit a completed Neighborhood Services Division Cart Collection agreement. (P)
- 13. Cart Collection Storage Area** - The cart collection storage areas at the front of the store shall have an exterior wall using a natural stone to match the building façade. (P)
- 14. Cart Collection Areas in Parking Lot** - Concrete curbing shall be used for cart collection areas in the parking lot. No pre-fab, metal or bright colored cart corrals shall be used. (P)

Miscellaneous

- 15. Garbage Handling** - Prior to issuance of a certificate of occupancy, the business owner shall submit a report detailing a program assigning staff perpetual responsibility for complying with the following guidelines (P)
- a) Keep garbage dumpsters clean inside and out; replace dirty or leaking dumpsters with new, clean ones.
  - b) Double or triple bag waste to prevent leaking.
  - c) Place, do not drop or throw, waste-filled bags, to prevent leaking.
  - d) Keep the ground under and around the garbage dumpsters swept.
  - e) Sprinkle the ground lightly after sweeping with a mixture of water and a little bleach.
- 16. BMP** - It is expected that Best Management Practices for solid waste handling will advance over time, thus it is the expectation that the applicant will modify their practices in accordance with future standards.
- 17. Violation of Conditions** - If at any time a violation of any approved condition occurs, the use permit and S-Zone approval shall be brought back to the Planning Commission at a public hearing to re-evaluate the use and all conditions for possible modification, suspension or revocation. (P)
- 18. Private Job Account** - If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
- 19. Private Job Account** - If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P)

Engineering Conditions

- 20. Water and Sewage** - The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2)



the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)

21. **Storm and Sewer Facilities** - Prior to issuance of any building permits, developer shall obtain approval from the City Engineer of the water, sewer and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)
22. **SWPPP** - The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities that disturb 1 acres or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site-monitoring plan must also be developed by the applicant, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)
23. **Submittal** - The developer shall submit the following items with the building permit application and pay the related fees prior to final inspection (occupancy) by the Building Division: (E)
  - a) Water Service Agreement(s) for water meter(s) and detector check(s).
  - b) Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s).
24. **Trash Enclosures** - Prior to occupancy permit issuance for both residential and commercial development, the developer shall construct trash enclosures, designed per the Development Guidelines for Solid Waste Services. City review/approval is required prior to construction of the trash enclosure. Compactor area and the new enclosures shall drain to the sanitary sewer. (E)
25. **Solid Waste** - Prior to occupancy permit issuance for the commercial development, the developer shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI: (E)
  - a) Maintain an adequate level of service for trash collection.
  - b) Maintain recycling services including separate services for beverage containers.
  - c) If any food establishment is proposed, accommodation for tallow account is required.

After the start of business, the solid waste service shall be evaluated by BFI commercial representative to determine the adequacy of the service level. If it is found to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234.

**RECOMMENDED SPECIAL CONDITIONS FOR S-ZONE SZ2003-13 AND USE PERMIT NO. UP2002-43 (*Residential Site and Architecture Review and Density*)**

**General**

1. **General** - This approval is for a 65-unit multi-family residential development and Use Permit No. P-UP2002-43 is to allow the development at a density below 21 DU per acre as per the approved plans dated March 24, 2004, except as may be otherwise modified by these conditions of approval. Any change in nature of the operation shall require review and approval by the Planning Commission. Minor changes, as per Sec. 42-10-2 of the Milpitas Zoning Ordinance, to approved plans may be approved by the Planning Division staff. (P)
2. **General** - The proposed project shall be conducted in compliance with all applicable federal, state, and local regulations. (P)
3. **Tentative Map and Architectural Plans** – In exchange for applicants' deferment of submitting a tentative map and detailed architectural plans with his use permit and S-Zone applications, applicant agrees to be ineligible for dedicating land or easement as a means to exercise the residential use permit and S-Zone approvals. Upon approval of a tentative map and detailed architectural plans, applicants' eligibility shall be granted. (P)
4. **Conditional Approval of S-Zone and Use Permit** – Approval of the S-Zone and Use Permit is conditional on the Redevelopment Agencies Council approval of the proposed Owners Participation Agreement (OPA) between the applicant and the Agency. (P)
5. **Documentation of Loading Areas** - Recorded closing documents shall include disclosure statements about the proximity of the project to the commercial loading areas. (P)
6. **Signs on Trees** - No signs shall be erected on any trees. (P)

**Architecture**

7. **Architectural Modifications** - Given the conceptual information submitted regarding several site and architectural aspects, the following shall be submitted to the approval of the Planning Division prior to building permit submittal: (P)
  - a) The applicant shall submit revised building elevations that clearly show all details of the buildings without any conceptual lines and shadows.
  - b) The applicant shall submit plans that include the location of bicycle parking (5% of total residential parking required) throughout the development.
  - c) The applicant shall submit plans for the decorative paving accents in the driveway at the southeast end of the project, similar to those used at the driveway entrance at the west end of the site. Revised plans shall also include decorative pavers in key locations (intersections and gathering areas) of walkways throughout the site.

- d) Windows for the residential portion of the project shall be recessed a minimum of six (6) inches into the wall.
  - e) All windows shall have a height greater than or equal to their width and the glass shall be clear, not tinted.
  - f) To reduce commercial noise impacts to residents, double-paned windows shall be provided on all units adjacent to commercial.
  - g) To break up the large blank sections of wall on the motor court elevation of building type I, modified plans shall be submitted for review that reduce the blank sections on the building.
  - h) Provide relief and interest to the interior street elevation of building type II, particularly on the facades of both end unit C's.
  - i) The building shall incorporate a base to the exterior of the building to provide for better building balance.
8. **Downspouts** - Prior to building permit issuance, building permit plans shall include the locations of building downspouts to the approval of the Planning Division. If downspouts are exposed they shall be designed to blend with the building. (P)
9. **Colors** - Prior to building permit issuance, all color permutations for all buildings shall be submitted to the Planning Division for review and approval. (P)

Site Improvements

10. **Recreational Amenities** - Prior to building permit issuance, plans for the residential portion of the project shall include recreational amenities to include at a minimum a tot lot and a sheltered picnic area with barbecues and tables and chairs. (P)
11. **Screening** - Prior to building permit issuance, wall (or some screening alternative) shall be installed to minimize noise and light disturbances (to the full height of truck lights) from the commercial loading areas. (P)
12. **Garbage Enclosures** - The locations of garbage enclosures shall not be in close proximity to any pedestrian/trail gathering areas.

Landscaping

13. **Screening of Utilities** - All mechanical equipment and boxes shall be screened from all views (public and private). (P)
14. **Tree Sizes** - Prior to building permit issuance, all new trees proposed for the site shall be a minimum of 24-inch box, except for any protected tree replacement specimens that shall be a minimum size of 48-inch box. (P)
15. **Irrigation** - All planter areas shall be serviced by an automatic system with low volume drip, spray or bubbler emitters. (P)
16. **Pedestrian Trail Amenities** - Prior to any permit issuance, permit plans shall be submitted and approved by the Planning Division that includes increased amenities to be provided along

all portions of the pedestrian trail to further delineate and connect all broken segments of the trail. (P)

17. **Landscape Maintenance Agreement**- Prior to any occupancy (or as otherwise specified in the applicants' phasing plan) of the project the applicant shall enter into an Encroachment Permit Agreement, with the City, or if necessary CalTrans, for the purpose of maintaining the landscaping installed by the applicant within City or CalTrans right of way, to City standards, along the following streets:

- ❑ Both sides of Milpitas Boulevard between Calaveras Boulevard and the commercial property north of Town Center on the west side and between Calaveras Boulevard and Town Center Drive on the east side.
- ❑ Both sides of Hillview Drive from Berryessa Creek to Calaveras Boulevard.
- ❑ Calaveras Boulevard from Milpitas Boulevard to Hillview Drive.

The City anticipates that it may form an assessment district for, among other purposes, the purpose of maintaining the roadway landscaping along the streets listed above. In the event that the City forms an assessment district for such purposes, the applicant, on behalf of itself and its successors in interest, by accepting the permit to which this condition is attached hereby waives any rights it may have to protest its inclusion in an assessment district the purpose of which includes the maintenance of the street landscaping listed above. The applicant, on behalf of itself and its successors in interest, by accepting the permit to which this condition is attached further waives any right it may have to protest or submit a ballot against the amount of the assessment, provided, however, that the foregoing waiver shall apply only to the extent that the assessment that would be imposed on the applicant's property does not exceed \$50,000 per year, without considering any inflation adjustment factor that may be contained in the assessment. In addition, the applicant, on behalf of itself and its successors in interest, agrees that in the event it fails to submit a ballot in favor of the assessment, the City may treat this failure to submit a ballot as the submission of a ballot in favor of the assessment. (see COA#18)

As with all project conditions of approval, this condition shall run with the land and any subsequent landowners. (P)

18. **Maintenance Standard for Street Trees** - A plan for the landscaping as mentioned in condition of approval no. 11 – commercial, with the exception of any streetscape along City Hall frontage, shall be submitted for review and approval prior to any building permit issuance establishing minimum standards for the applicant's maintenance of said landscaping. Maintenance responsibility shall continue through the life of the project and run with the land, or until such time as the assessment district referenced in condition of approval no. 17 is created. (P)

#### Lighting

19. **Uplighting of Trees** - No uplighting of any palm trees along Calaveras Boulevard. (P)
20. **Pedestrian Scale Lighting** - Pedestrian scale lighting should not exceed a height of 16 feet. (P)

21. **Lighting** - Additional lighting is required behind shop “C”, as the light levels in this area is 0. (P)

22. **Low Pressure Sodium Lamps** - Low pressure sodium lamps are not allowed in the residential portion of the project. (P)

Garbage Enclosures

23. **Storage of Garbage Bins** - If the City, at any time, finds that trash bins are not properly stored in enclosures, roll-out service shall be required. (P)

Housing

24. **Affordable Housing** - The total number of 65 “for-sale” units shall be provided in the residential development. Affordability of a total of 20 units shall be provided to very low and moderate-income households through a combination of off-site (4) and on-site units (16). (H)

25. **Documentation** - Prior to the issuance of any permit, the applicant shall provide documentation to the approval of the City Attorney that the following 16 affordable housing units on-site will be available at a housing cost affordable to moderate-income households: (H)

Moderate (on-site)	16	3-bedroom units

26. **Location and Type** - As part of the identified public benefit for this project, prior to issuance of building permits, the following conditions shall be met: (H)

- The applicant shall make at least 16 of the 65 “for-sale” units (allowed in “MXD- TC” district) affordable to households agreed upon by the applicant and the City and noted in the above matrix.
- In exchange for the applicant’s provision of various off-site public benefits and improvements as part of the development proposal, the City of Milpitas Redevelopment Agency shall provide financial assistance for the rehabilitation of four (4) existing rental apartment units for very low income households.
- Prior to occupancy, the applicant shall provide to the City of Milpitas Executive Director of Redevelopment Agency or his or her designee for review and approval, a dispersement plan exhibit illustrating the location of the affordable housing units within the development. The affordable housing units shall be dispersed equally throughout the development and shall contain the same architectural features, design and amenities as the fair market rate units in the development.

27. **Income Limits** - Income eligibility for the required number of affordable units shall be determined pursuant to the California Health and Safety Code Sections 50079.5, 50093 and 50105, which provide that the very low limits established by the U.S. Department of Housing and Urban Development (HUD) are the state limits for that income category. (H)

28. **Restriction Agreement** - The applicant and the City of Milpitas shall enter into Restriction Agreements that outline the provisions for maintaining the long-term affordability of the required affordable "for-sale" units. The Restriction Agreements shall be approved to form by the Milpitas City Attorney's Office, executed by the City Manager and recorded with the County of Santa Clara. (H)
29. **Affordable Time Limit** - The Restriction Agreements shall require that the long-term affordability of the "for-sale" housing units shall remain in effect for forty-five (45) years. Any change to this requirement is subject to review and approval by the Milpitas City Council. (H)
30. **Eligibility** - The applicant shall work with the Housing Division staff in establishing and determining the waiting list of eligible residents that are qualified for the project. (H)
31. **Pricing** - The established affordable housing prices for the "for-sale" units shall be pursuant to income eligibility provided by the California Health and Safety Code Sections 50079.5, 50093 and 50105 which provide the "moderate" limits established by the U.S. Department of Housing and Urban Development (HUD) are the state limits for those income categories. The final affordable housing prices established for the "for-sale" units shall not exceed the maximum allowable prices for "moderate" households as defined in the above code sections. Said prices shall be approved for consistency with the definitions by the Housing Division staff. (H)

Mitigation Measures

32. **BMP** - The following shall be noted on demolition and grading plans and implemented during demolition or grading activities (P, Mitigation Measure 1):
- a) Watering should be used to control dust generation during demolition of structures and break-up of pavement.
  - b) Cover all trucks hauling demolition debris from the site.
  - c) Use dust-proof chutes to load debris into trucks whenever feasible.
33. **BMP** - The following shall be noted on plans and implemented during construction activities (P, Mitigation Measure 2):
- a) Water all active construction areas at least twice daily.
  - b) Watering or covering of stockpiles of debris, soil, sand or other materials that can be blown by the wind.
  - c) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
  - d) Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
  - e) Sweep daily (preferably with water sweepers) all paved access road, parking areas and staging areas at construction sites.
  - f) Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.

- g) Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
  - h) Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
  - i) Limit traffic speeds on unpaved areas to 15 mph.
  - j) Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
34. **BMP** - Measures shall be incorporated into project plans prior to issuance of any building permits (P, Mitigation Measure 3):
- a) To the extent feasible, minimize the amount of run-off that drains directly to the storm drain system. Possible solutions may include the following mitigation measures:
  - b) Directing run-off to landscaped areas for natural infiltration.
  - c) Direct run-off to catch basins or holding areas to capture runoff and allow infiltration into the soil.
  - d) Install fossil filters or alternative type of filter process to clean the run-off prior to discharge.
  - e) Install retention and/or detention ponds where feasible.
  - f) Re-grade the site so that most surface run-off will be directed to proposed landscaped areas.
35. **BMP** - Measures shall be implemented during final project design and construction (P, Mitigation Measure 4):
- a) To the extent feasible, design the project facilities to direct runoff into constructed shallow swales to capture runoff and allow it to infiltrate into the soil. Incorporate design concepts recommended in the Bay Area Stormwater Management Agencies Association's "Start at the Source" Design Guidance Manual for Stormwater Quality Protection (BASMAA 1999);
  - b) Implement best management practices (BMPs) for the control of erosion during the temporary stockpiling of excavated soils, including, but not limited to the use of fiber rolls and installing sand or gravel bags to minimize runoff impacts to halt runoff from entering the storm drainage system;
  - c) Applicant shall submit plans depicting non-structural and structural post-construction BMPs for maximum feasible implementation pursuant to the City of Milpitas Urban Runoff Management Program.
36. **Noise** - Any residence within 130 feet from the rear of the Staples store shall have all windows and doors for living spaces remain closed and mechanical ventilation shall be provided. This requirement does not imply a "fixed" condition. Bathroom windows may be kept open, with the exceptions of bathrooms that are an integral part of the living space and not separated by a closeable door. (P, Mitigation Measure 6)

37. **Noise** - To following actions shall be implemented during all construction activities. (P, Mitigation Measure 7):

- a) Demolition of buildings should occur in phases with the walls of the building closest to existing residences being removed last as the walls can act as noise barriers.
- b) Schedule noisy operations for the daytime hours of 7:00AM to 5:00PM Monday through Friday.
- c) All diesel powered equipment should be located more than 115 feet from any residence if the equipment is to operate more than several hours a day.
- d) Dirt berming and stockpiling materials whenever possible to help reduce noise to sensitive receptor locations.
- e) Proper construction equipment shall be used including, but not limited to, scrapers for earth removal, backhoe for backfilling, motor grader, nail guns and shielded or enclosed power saws.

Miscellaneous

38. **Park In-Lieu Fees** - Prior to issuance of any building permits, park in-lieu fees of \$772,850 shall be paid to the city. This fee has been calculated based on the density provided and allowing full open space credit. (P)

39. **Private Job Account** - If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)

40. **Private Job Account** - If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P)

41. **Construction Phasing Plan** - Prior to building permit issuance, a construction phasing plan shall be submitted that specifies in which phases improvements required as part of the project's condition of approval shall be completed. The phasing plan must and shall specify which required improvements (by condition reference) must be completed prior to issuance of a Certificate of Occupancy for structures in each phase of the plan. The timing of all improvements specified in the project's conditions of approval, with the exception of those related to traffic, may be modified administratively via the phasing plan. (P)

42. **Pre-Construction Meeting** - Prior to any permit issuance the applicant shall have a pre-construction meeting with the City. (P)

Engineering Conditions

43. **Water and Sewer** - The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)



44. **Storm, Sewer, and Storm Facilities** - Prior to issuance of any building permits, developer shall obtain approval from the City Engineer of the water, sewer and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)
45. **Tentative Map** - Prior to any building permit issuance for the residential development, the developer shall obtain the City's approval of a tentative map and record a final map. (E)
46. **Easements** - Prior to building permit issuance, the developer shall dedicate necessary public service utility easements, easements for water and sanitary sewer purposes, and comply with other requirements as shown on Engineering Services "S" (dated 2/1/2004). (E)
47. **Streets, HOA, Maintenance Agreement** - Prior to final map recordation for the residential development, the developer shall: (E)
- a) Establish a private street network serving both commercial and residential development, street width and layout within the residential subdivision is subject to City review and approval.
  - b) Record a mutual access and maintenance agreement concurrent with the recordation of the final map. The mutual access and maintenance agreement shall cover the private street network and provide for the use of lands and maintenance of private facilities, including but not limited to private street, private trail access, drainage, sewer, water, landscaping, walls and other common area facilities.
  - c) Establish a homeowner association, the homeowner association shall be responsible for the maintenance of the landscaping, walls, private street lights, private trail access, common area, and its fair share cost of maintaining access and facilities shared with commercial site, and private streets and shall have assessment power. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted for review and approval by the City Engineer.
48. **Underground** - In accordance with Milpitas Municipal Code XI-1-7.02-2, the developer shall underground all existing wires and remove utility poles within the subdivision with the exception of transmission lines supported by metal poles carrying voltages of 37.5K. All proposed utilities within the subdivision shall also be underground. (E)
49. **Grading and Drainage** - Prior to any building permit issuance, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to final inspection/occupancy permit issuance. (E)

**50. Public Improvements** - Prior to any building permit issuance or map recordation (whichever occurs first), the developer shall: (E)

- a) Obtain design approval and bond for all necessary public improvements including but not limited to Hillview/Town Center Drive intersection modification as identified on the approved Traffic Impact Analysis report and Engineering Services Exhibit "S" (dated 2/1/2004), water main, sewer main, fire hydrants, public utility relocation/removal/abandonment, sewer and water services. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. These improvements must be installed within 18 months of the issuance of any building permits, unless delayed by agencies other than Milpitas, such as Caltrans.
- b) In addition bond for the design and installation of a traffic signal and/or necessary geometric improvements to improve operations at the Hillview/Town Center Drive intersection. The developer shall be responsible for annual monitoring of this intersection for a period of five years (from the date of this approval) during months of normal traffic flow (April or October). The annual monitoring report shall be submitted to the City for review and approval. The developer shall complete the construction of the improvements within 18 months of observed queue lengths blocking intersections during 15 percent or more of the traffic signal cycles during an observed hour. The improvements shall be designed and constructed to satisfaction of the City Engineer.

**51. SWPPP** - The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities that disturb 1 acres or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site-monitoring plan must also be developed by the applicant, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)

**52. Site Distance** - The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. No permanent structure is allowed within City's easement or right of way. (E)

**53. Protected Public Utilities** - All existing on-site public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements. (E)

54. **Submittals** - The developer shall submit the following items with the building permit application and pay the related fees prior to final inspection (occupancy) by the Building Division: (E)

- a) Water Service Agreement(s) for water meter(s) and detector check(s).
- b) Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s).

55. **Irrigation** - In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall: (E)

- a) Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.
- b) Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package.
- c) Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.

- 1. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal

56. **Recycle Water** - Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240), *for the sites adjacent to the recycle water main* the landscape irrigation system must be designed to meet the City's recycled water guidelines and connect to recycled water system when available. *The developer shall extend the recycle water mains into the site and retrofit the entire Town Center's landscaped area for recycled water connection, to benefit from the lower water rate and drought proofing limitations.* Contact the Land Development Section of the Engineering Division at (408) 586-3329 for design standards to be employed. (E)

57. **Recycle Water** - To meet the recycle water guideline the developer shall: (E)

- a) Design the landscape irrigation for recycled water use. Use of recycled water applies to all existing rehabilitated and/or new landscape adjacent to existing or future recycled water distribution lines (except for rehabilitated landscape less than 2500 square feet along the future alignment).
- b) Design the irrigation system in conformance to the South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. Prior to building permit issuance the City will submit the plans to the Department of Health Services (DOHS) for approval; this approval requires additional processing time. The owner is responsible for all costs for designing and installing site improvements, connecting to the recycled water main, and processing of City and Department of Health Services approvals. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain copies of design guidelines and standards.

- c) Protect outdoor eating areas from over spray or wind drift of irrigation water to minimize public contact with recycled water. Recycled water shall not be used for washing eating areas, walkways, pavements, and any other uncontrolled access areas.

Prior to occupancy permit issuance for both residential and commercial development, the developer shall construct trash enclosures, designed per the Development Guidelines for Solid Waste Services. City review/approval is required prior to construction of the trash enclosure. Compactor area and the new enclosures shall drain to the sanitary sewer.

58. **Solid Waste** - Prior to occupancy permit issuance, the developer shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for the residential development: (E)

- a) Maintain an adequate level of service for trash collection.
- b) Maintain recycling services.

After the buildings are occupied, the solid waste services shall be evaluated by BFI representative to determine the adequacy of the service level. If it is found to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234.

59. **Solid Waste Discharge** - Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit. (E)

60. **Encroachment Permit** - Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)

61. **Notification of Affected Parties** - Prior to any building permit issuance, developer shall submit plans to all affected agencies and private parties, including but not limited to SFPUC, PG & E, SCVWD and Mervyn's, and obtain their approval to construct the proposed improvements upon their easements or properties. Copies of these approvals, permits, conditions and requirements must be submitted to the City of Milpitas Engineering Division. (E)

(P) – Planning Division

(E) – Engineering Division

(H) – Housing Division